



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: May 17, 2021

Approved

Date

5/17/2021

SUPPLEMENTAL

SUBJECT: ADDITIONAL INFORMATION RELATED TO THE DEVELOPMENT AGREEMENT FOR GOOGLE'S DOWNTOWN WEST PROJECT

REASON FOR SUPPLEMENTAL

The purpose of this supplemental memorandum is to:

- Describe changes to the Development Agreement since the draft was published on April 6, 2021.
- Summarize key considerations related to Project implementation.
- Make additional recommendations for City Council consideration related to implementing the Development Agreement and Community Benefits for the Project.
- Provide additional detail on the above through the attached appendices:
 - A. Appendix A: April 6, 2021 Info Memorandum summarizing the Development Agreement and Key Summary slides from SAAG presentation.
 - B. Appendix B: Public comments on the Development Agreement (including notes from the Station Area Advisory Group (SAAG) and Community meetings and online comment form).
 - C. Appendix C: Menu of recommendations allocating the early \$7.5M community benefit contribution (of which \$3.0M will now be paid within 30 days of Council Approval) and the unallocated \$22.3M community benefit contribution.
 - D. Appendix D: Electric Microgrid for the Downtown West Project.
 - E. Appendix E: Responses to San José Sharks letters.

BACKGROUND

On May 25, 2021, City Council is scheduled to consider Google's proposed Downtown West project (including the Development Agreement), the City-initiated amendments to the Diridon Station Area Plan (DSAP), and the City's Diridon Affordable Housing Implementation Plan (AHIP). These projects, which have been advanced simultaneously, respond to Council and community direction, and set an ambitious but achievable vision for equitable development within the Diridon Station Area (DSA). The projects collectively support a goal of 25% affordable housing within the DSAP. The Downtown West Project proposal provides:

- Up to \$154.8 million for a Community Stabilization and Opportunity Pathways Fund (the "Fund");
- Up to \$45 million of other Community Benefits funding (including a \$7.5 million early payment to the City and up to \$22.3 million for an unspecified purpose in the Draft Development Agreement);
- Over \$253 million to meet City requirements at full buildout (including affordable housing, public parks and other fees and improvements), and
- Over \$1 billion in infrastructure investments and project features at full buildout that create additional public benefits (such as open space and sustainability investments).

The Draft Development Agreement that governs the Downtown West Project was posted for public review on April 6, 2021 along with a detailed memorandum (see summary of the Development Agreement in Appendix A). This marked a key milestone in the Project, following adoption of a Memorandum of Understanding (MOU) in 2018, application submittal in 2019, and release of the Draft Environmental Impact Report (DEIR) in 2020. If approved, the Development Agreement would be legally binding and enforceable over a 30-year term.

On April 14, 2021, the SAAG reviewed the proposed Development Agreement and members provided comments; all representatives that provided comments, with the exception of one, expressed support for the Draft Development Agreement. On April 17, 2021, the City held a Community Meeting to gather comments from the general public; the discussions were facilitated by community partner organizations and included one breakout room in Spanish. On April 28, 2021, the Planning Commission held a public hearing on the proposed Downtown West Project and unanimously voted to recommend that the City Council approve the proposed Project, including the Development Agreement. Staff also offered an online comment form at www.diridonsj.org/downtownwestda from April 6 through May 10, 2021. The meeting summaries and comments received are attached as Appendix B to this memorandum and summarized in the Planning Commission transmittal memorandum to Council on the Downtown West Project (May 14, 2021).

I. ADDITIONAL RECOMMENDATIONS RELATED TO THE DEVELOPMENT AGREEMENT

The draft Development Agreement included two amounts of unallocated Community Benefits funding, pending public review and comment and Council direction. The first of these amounts was \$7.5 million in funding that would be paid by Google after Final Approval.¹ As discussed below, the \$7.5 million funding will now be paid in two tranches: \$3.0 million will be paid even earlier: 30 days after City Council Approval; the remaining \$4.5 million will be paid 120 days after Final Approval. The second amount is up to \$22.3 million in funding that will be paid by Google over time, at a rate of \$3.06 per square foot of office at Temporary Certificate of Occupancy of each building. The intent is for City Council to allocate these Community Benefits funds.

The City has received a significant amount of community feedback on how to allocate community benefit funds, going back to the 2018 engagement process that resulted in a [list of Desired Outcomes](#) and informed the [MOU with Google](#). In 2020, the City conducted an online survey asking about community benefit preferences. As noted above, staff solicited comments on the Draft Development Agreement earlier this spring, and asked about priorities related to job readiness, community stabilization, and other needs.

As described in more detail in Appendix B, recent public comments suggested that funding be prioritized to support housing stability (legal services, tenant education, rent stabilization, and long-term housing affordability through land trusts and rent stabilization) and economic opportunity/education (programs that address poverty and create opportunity, including for job training, after school activities, and other programs). Staff considered this input, along with other community feedback from 2018-21 and Council direction on community benefit priorities, in making recommendations on the unallocated funding, as shown in the table below.

Recommendations for \$7.5 Million of Early Funding	Recommendations for up to \$22.3 Million of Funding Over Time*
<u>\$3.0 Million</u> : Immediate Community Stabilization and Ownership Programs (<i>including tenant education/outreach, eviction protection services, land trust predevelopment/ feasibility</i>)	<u>\$10.3 Million</u> : Educational Opportunity (<i>including College/Career Readiness, College Scholarships</i>)
<u>\$3.25 Million</u> : Scholarships and Job Training (<i>including scholarships/training for at-risk youth/ adults; childcare to support workforce participation</i>)	<u>\$7.5 Million</u> : Community Stabilization Programs (<i>including Ownership models, Homeless Outreach and Street-Based Services</i>)

¹ The Development Agreement generally defines “Final Approval” as City Council approval of the Project (including the Development Agreement) and, if applicable, resolution of any appeals or referendums challenging Council approval.

<u>\$1 Million</u> : Neighborhood Programs to Support Economic Recovery/Resilience in and around the DSA	<u>\$2.5 Million</u> : Early Childhood Education and Childcare Support
<u>\$250,000</u> : Funding to Initiate Community Stabilization and Opportunity Pathways Fund, including first Five-year Strategic Plan (Governance/Management)	<u>\$2 Million</u> : Seed Funds for Neighborhood Programs in and Around the DSA to Support Economic Resilience

** These programs will be funded proportionally as the Project is built*

In addition to the Planning Commission’s recommendation of Project approval, City staff recommends that the Council:

- A. accept staff’s recommendations on allocation of the early payments of \$3.0 and \$3.25 million; and
- B. accept staff’s recommendations on allocation of the up to \$22.3 million in Community Benefits funding that will be paid by Google as office gets built over time.

The programs to be funded directly by the City are intended to focus on increasing economic opportunity, housing security, and support services for disadvantaged communities and under-resourced residents, such as first-generation college goers, people of color, and at-risk youth. While most of the funds would be eligible citywide, the neighborhood and childcare programs are intended for residents of the Diridon Station Area and surrounding neighborhoods, including the Gardner neighborhood south of I-280.

The early payment of \$3.0 million would occur 30 days after Council Approval and remaining \$4.5 million would occur 120 days after Final Approval, in advance of when the first payment toward the \$154.8 million Fund would be made. Staff recommends that the \$3.0 million payment advanced by Google support Community Stabilization and Ownership Programs, in light of COVID and the large number of individuals and families who are in a vulnerable housing position and in need of immediate tenant protection and assistance. This may include tenant education/outreach, eviction protection services, land trust predevelopment/feasibility.

Staff further recommends that the second \$4.5 million be spent on economic recovery, pilot programs and laying the groundwork for long-term strategies. For the funds that will come in over time as office projects get built, the intent is for City Council to direct funds in ways that implement the City’s housing and workforce plans, complement the Fund’s Strategic Plan, and fill in gaps – all to advance the City’s equitable development goals. The categories provide flexibility for the City to identify programs that are relevant at that time that funds come in from Google.

If approved by Council, staff would use the \$3.0 million immediately after payment, consistent with the menu above and the City’s contract processes. For the remaining funds, City staff will prepare specific recommendations for funding individual programs, as aligned with Council direction and the City’s contract processes.

II. CHANGES/UPDATES SINCE DOCUMENTS WERE PUBLISHED ON APRIL 6, 2021

Since the Draft Development Agreement was released on April 6, 2021, the City has made changes as staff has completed final negotiations with Google and has refined the Development Agreement and select Entitlement documents.

These changes are summarized in the section below and address issues related to 1) early payment of community benefits; 2) affordable housing; 3) streets and rights of way; 4) reimbursement for City costs associated with Subsequent Approvals; 5) district utilities and microgrid (also summarized in Appendix C); and 6) payments for occupancy of rights of way. This section also addresses some of the questions raised recently as part of the engagement process on the Development Agreement. As described in Section III and in Appendix E, the City has also made changes in response to comments from the Sharks Sports & Entertainment (SSE).

Early Payment of Community Benefits

The Draft Development Agreement included an early payment of \$7.5 million by Google for pressing community needs within 120 days of Final Approval. City staff solicited feedback on the use of these funds; community members highlighted the impact of COVID and the large number of individuals and families who are in a vulnerable housing position and in need of immediate tenant protection and assistance. Working together, the City and Google have agreed that the \$7.5 million will be paid in two tranches to address these immediate needs. As described above, \$3.00 million will be paid even earlier (30 days after Council Approval) for Community Stabilization and Ownership programs. The remaining \$3.25 million will be paid 120 days after Final Approval as before, for use consistent with Council direction on Staff's recommendations.

Housing Updates and Housing Questions about Location

Since publication on April 6, 2021, additional documents referenced in the Development Agreement have been completed and are now publicly available. These include:

- Updated Inclusionary Housing Ordinance (IHO) administrative guidelines, which are updated to reflect the new IHO rules that the Council approved on February 23, 2021;
- Transfer Agreement Templates for the Affordable Housing Sites that further describe the mechanism to transfer the sites, and the penalties for failure to complete the transfers; and
- Edits to Exhibit D of the Development Agreement so that two affordable housing sites will be accelerated with the first office building, and transferred well advance of any IHO

obligations. This is in addition to one site on Autumn Street² (“Autumn Street Parcels”) outside of the Project site that will be transferred 90 days after Final Approvals, and clarify the City’s remedies if these sites are delayed.

Some public comments have asked why affordable housing is “concentrated” in one geographic area. The diagram below shows the location of affordable housing within the Project.



In total, there are about 1,000 affordable units planned within and immediately adjacent to the Downtown West Project site. These units would be offered to families with a range of incomes, consistent with Council direction and community input, and would be distributed throughout the Project area:

- 200 units for households making up to 100% of the Area Median Income (AMI) would be integrated into market rate buildings across the Downtown West Project site.
- 800 units affordable to families earning 30-80% of the AMI would be located on four sites dedicated to the City by Google. These sites would be located adjacent to proposed market-rate housing. Providing these units in standalone buildings, rather than integrated within market-rate buildings, enables use of affordable housing financing and supports deeper levels of affordability (i.e., lower income limits).
- Google would transfer three of the four parcels (“H5”, “H6” and the Autumn Street Parcels³) for 30-80% AMI residents to the City early in the Project. Google would transfer to the City the Autumn Street Parcels 3 months after Final Approval and would

² The City is considering changing the land use designations and zoning of the Autumn Street site (located outside of the Downtown West project site but within the Diridon Station Area) to allow for residential uses and approximately 200 affordable housing units, subject to subsequent clearances and discretionary approvals.

³ The City is considering changing the land use designations and zoning of the Autumn Street site (located outside of the Downtown West project site but within the Diridon Station Area) to allow for residential uses and approximately 200 affordable housing units, subject to subsequent clearances and discretionary approvals.

transfer the H5 and H6 parcels in parallel with Google's first office building, potentially in advance of residential development that would trigger Inclusionary Housing Ordinance requirements. This will facilitate construction of the affordable housing by non-profit developers as soon as possible; these parcels are all in locations where the infrastructure to serve them already exists or where it will be built early in the Project. The early dedications also make it more likely that Measure A funds will be available to further deepen affordability levels.

The sites for affordable housing were selected in locations more suitable for "podium construction" which is more economically feasible, while balancing higher density in other locations to maintain a high level of overall housing production. This will reduce development costs for the non-profit developer on a per-unit basis, enabling affordable housing to be built sooner, as sufficient financing for high rise development is difficult to obtain. Should construction of additional height become feasible, the City has the ability to build additional density.

Streets/ROW Vacation

Since the documents were published, the parties have determined that there are some portions of City-controlled Right of Way (ROW) that were intended to be included in the Privately-Owned Publicly Accessible Open Space where the fee interest in the sites is neither owned by the City or Google.

The newly-published documents include five additional resolutions that allow conditional vacation of a portion of South Montgomery Street, Park Avenue, Otterson Street, and Cinnabar Street with the reservation of public easements over the entire area to be vacated ("Subject Portion"). On these five Subject Portions the vehicular component of the right of way will be vacated, and the bicycle and pedestrian component of the ROW will remain in place, which allows them to continue to function consistently with the proposed open space plan as defined in the Downtown West Design Standards and Guidelines (DWDSG) in the event that the underlying fee interest remains with the current, legacy owners of the Public ROW where the City has an existing easement.⁴ The Project's Environmental Impact Report and related studies evaluated the removal of motorized vehicular traffic from the Subject Property consistent with the General Development Plan (GDP) and DWDSG.

The modifications also clarify that if Google is unable to acquire and manage the space as Privately-Owned Publicly Accessible Open Space, they will still pay for the maintenance of these spaces for a minimum of 50 years.

⁴ See Str. & Hwy. § 8309;_see also *Martis Camp Community Association v. County of Placer* (2020) 53 Cal. App. 5th 569, 598 (confirming a local agency's ability to terminate certain public uses of a street through a vacation while reserving other public uses and rights of access).

Staff recommends the reservation of certain public easements from the proposed vacation as described in Section 5 of the Resolution. These include a public easement for “non-vehicular transportation and pedestrian access purposes” and related “improvements,” which may include “street furniture, hardscaping and landscaping and other facilities that serve the public use in the public easement.”

Staff also recommends that Council authorize encroachment permits for streetscape improvements to allow Google to install and maintain improvements and facilities that serve the public using the Subject Portion. The encroachment permits would be issued by the Director of Public Works after the satisfaction of specified criteria. The permits would have an initial term of fifty years, with the option for Google to extend up to ninety-nine years, subject to the City's right of revocation or termination as specified in the Encroachment Agreement.

Reimbursement Agreements

Google has agreed to reimburse City costs for the expedited review and processing of Subsequent Approvals. This may include costs to employ full-time, dedicated staff, hourly costs for other City staff, and consultant costs. City staff and Google have negotiated a term sheet, attached to the Development Agreement, since the project documents were published on April 6, 2021, which will be the basis for negotiation of an annual Reimbursement Agreement between the City and Google, estimated to begin in the 2022-2023 fiscal year (July 1, 2022), and which process is aligned with the City's standard budgeting process. The City and Google are currently finalizing a work plan and budget for the 2021-2022 year consistent with the Term Sheet for Subsequent Approval through the budget process, which covers the approximately 13 months of City Staff work between City Council action on May 2, 2021^h and June 30, 2022.

Electric Microgrid

A major component of the Downtown West Project is a proposed “District Systems” approach to more efficiently handle some of the utility needs of the development. Consistent with this approach, and in alignment with City Council priorities related to energy resiliency, Google is proposing an advanced microgrid electrical distribution system with renewable energy generation and storage resources distributed throughout the development. One of the main benefits of the microgrid is more resilient, clean, and affordable energy for the community within the Project. The implementation of a microgrid is consistent with the objectives of the Memorandum of Understanding between the City and Google and helps support the response to AB 900 environmental goals.

There are currently three available options under consideration for operating this system and providing electric service to the development, which were discussed during a City Council Study Session on March 25, 2021: 1) PG&E retail/ Community Microgrid Enablement Program (CMEP) service, 2) City provided service, and 3) private (Google provided) service. All electric service options are being thoroughly evaluated and explored by the City and Google. No immediate decisions to select one of the options are necessary at this time; all three options will

be enabled through the entitlement to maintain flexibility. The work to analyze these options, and ultimately to construct a microgrid to commence operations, would be funded by the developer. The developer will also select the option due to schedule constraints and investments required to meet the objectives of the microgrid and development.

City staff, under the direction of City Council and in collaboration with Google, has conducted analyses to evaluate the legal, regulatory and economic feasibility and the potential benefits and risks of this option. City provided electric service is a viable approach that would likely result in energy cost savings as well as more reliable and resilient energy for the residents and businesses within the development. Attachment D, titled Electric Microgrid for the Downtown West Project, thoroughly describes staff's analysis of the City-provided electric service option.

Within Appendix J of the Development Agreement the City and Developer defines a pathway to further investigate and develop the City Electric Service option. Appendix D describes additional analysis (funded by the Developer) that must be completed before any decisions would need to be made by City Council. In particular, this would include a business plan and draft agreements. The business plan would better describe expected rates, tariffs, operations, and organizational structure as well as include a detailed analysis of the opportunities and risks including the economic, climate, and resiliency risks and benefits. It is expected that the business plan and the framework for an agreement with the Developer would be brought forward for City Council consideration in the Fall of 2021. Final approval by City Council to establish City provided electric service to the Development would occur in Spring 2022 to meet the potential Development schedule.

Public Right of Way Occupancy Fee

The Project proposes to construct underground utility corridors (referred to collectively as the "Utilidor") for the conveyance of private utilities within the project area. The Utilidor is an underground infrastructure corridor measuring twenty-one feet in depth by twenty-four feet in width that will take permanent occupancy within the public right of way and therefore should be subject to fees for such use and occupancy. The Utilidor will house a range of utilities for the Project and will enable innovative approaches to delivery of district systems. The Utilidor will also house an electrical distribution microgrid; the City imposes a franchise fee for other electrical and gas utilities for their use of the public right of way, and as such, similarly proposes an occupancy fee within the public right of way.

A negotiated Public Right of Way (PROW) Occupancy Fee for the Utilidor mirrors existing franchise fee structures based on cubic fee data from ten California Public Works agencies and would establish a market-based fee for the use of the public right of way. This fee is based on a rate per cubic foot (based on similar California structures) which is then applied to the length of each Utilidor section crossing the PROW to calculate the overall fee. City staff proposes a PROW Occupancy Fee of \$43 per linear foot of electric distribution within the Utilidor crossing the public right of way, escalated at 2% annually.

III. KEY CONSIDERATIONS RELATED TO PROJECT IMPLEMENTATION

The Development Agreement includes many elements that provide certainty to both the City and to Google and is designed in a way to encourage timely development, while also providing community benefits to the public. However, there are certain external factors that cannot be mitigated by the City or Google that may affect the timing or scale of development and associated community benefits. This section provides additional information regarding 1) timing of the development; 2) streamlining of judicial review of potential litigation; 3) additional work in progress regarding coordination with Sharks Sports & Entertainment and potential impact on timing of development program; and 4) potential development capacity impacts of the Diridon Station Integrated Concept (DISC).

Development Timing and Feasibility

It is important to note that the vast majority of City fees and Community Benefits are paid over time, as the Project gets built. Key exceptions to this are: a) the \$7.5 million early community benefits payment; b) the transfer of the Autumn Street parcel; and c) payments of associated community benefits at 10 years (on 2 million square feet of office) and 20 years (on 4 million square feet of office) to maintain the Development Agreement if development performance thresholds (the same square footage of office development) are not met.

In the aggregate, the City and Google's interests are aligned around supporting the completion of the development plan. The greater the velocity of development, the sooner the City receives the benefits. Although the City has mitigated significant risk by requiring performance and early delivery of community benefits, there is still a risk that Google may not build all of the development capacity and the resulting Community Benefits paid may be proportionally less.

Assembly Bill 900 and Senate Bill 7

The Project has sought to streamline potential litigation challenging the project approvals by having the proposed Project certified by the Governor under Assembly Bill 900 (Jobs and Economic Improvement Through Environmental Leadership Act of 2011, or "AB 900") and complying with the strict requirements of AB 900, which was intended to: a) create good paying jobs and sustainable urban development; and b) support the development of housing and affordable housing. The AB 900 deadline for City Council certification of the EIR and project approvals was December 31, 2020. Due to the COVID-19 pandemic, the EIR and project approvals were not ready for City Council consideration before December 31, 2020. Senate Bill 7 (Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2021, or "SB 7") would extend this deadline for the proposed Project and other previously certified projects. The Assembly recently approved SB 7 by a vote of 70-1, and the bill is now awaiting the Governor's signature. SB 7 is an urgency statute so it would take effect immediately.

It is anticipated that SB 7 will be passed into law before the May 25, 2021. City Council meeting, which would streamline the litigation timeline for the Project to approximately nine months from the date the certified records are before the Court. City staff will provide a verbal update on the status of SB 7 at the May 25 City Council meeting.

Sharks Sports & Entertainment

The City values its relationship with the San Jose Sharks and has an Arena Management Agreement (AMA) that sets out mutual obligations of the City and the Sharks Sports & Entertainment (SSE), the owner of the Sharks and operator of the SAP Center. Since the publication of the Development Agreement, SSE has submitted various letters to the City relating to the EIR, requests for modifications on the project approvals, as well as their other concerns.

Two key priorities for SSE, which are reflected in the AMA and their comment letters, are adequate parking and efficient access/departure for fans, before and after games and events. The City and/or Google have met with SSE roughly 75 times since early 2019 to discuss these concerns. The City and Applicant continue to engage multiple respected consultants to conduct extensive supplementary event-related analysis and have made changes to address key concerns.

Traffic: From the inception of the Project, SSE has expressed concern that development around the SAP Center will alter traffic patterns and/or increase traffic, impacting access for fans. The City and Google have worked diligently with two respected parking and traffic consultants to evaluate multiple strategies to improve traffic flow at peak times. Results of this work show that at the peak times (rush hour and events) access to parking could take 0.5 to seven minutes longer from neighboring highways (I-280 or SR-87), relative to non-event days, depending on the route selected.

Parking: The Development Agreement includes detailed metrics requiring the Project to replace parking capacity as surface lots are redeveloped with buildings. These metrics also take into consideration parking availability over time, as development occurs. Planned parking considers several zones of proximity to the SAP Center, to ensure that new parking is convenient and generally located between the SAP Center and nearby freeways to make for efficient trips and avoid between people walking and driving. The requirements are also conservative, since Google may provide more than the required parking amount and other nearby parking locations also provide capacity.

The City's approach has focused on meeting the end result of access, traffic flow, and parking availability. SSE has not always agreed with this approach, with a preference for requiring specific improvements (e.g. specific parking garage locations or road widening).

The City will continue to work diligently with SSE to honor the AMA and implement measures that result in similar access for fans. SSE has requested that the City and Google remove Lots A/B/C from the proposed Project. This is unnecessary because transfer and development of Lots

A/B/C could only occur during the term of the AMA if SSE enters into a parking agreement, which would require SSE's consent. Lots A/B/C would enable the construction of approximately 1,000 homes and 665,000 square feet of office (estimated 2,660 jobs) as well as associated infrastructure improvements and community benefits. The City's responses to recent SSE letters are included in Appendix E.

Diridon Integrated Station Concept Plan (DISC)

Diridon Station is located adjacent to the Project. The City of San José, Caltrain, California High-Speed Rail Authority, Metropolitan Transportation Commission, and Santa Clara Valley Transportation Authority (VTA) have partnered together on the Diridon Integrated Station Concept Plan (DISC) to expand and redesign the station. The future station project and associated rail investments will bring substantial new and improved transit connections to the area. Both the City and Google support the DISC vision. The Development Agreement and specifically the Parkland Agreement (Exhibit E) also outline how Project open spaces and adjacent rail structures are being concurrently planned for greater community connectivity and integration.

That said, the design and engineering for these projects are still conceptual, and there is some risk that the final alignment of rail tracks and outer perimeter of DISC construction could impact the land available for the Project. Early design work by the DISC team and by peer-review engineers indicates that this is not a substantial risk and that there are viable alignment options that would not impact the Project.

Google, the City, and the other DISC Partner Agencies have worked together to define a "transit buffer zone" which provides some flexibility for design of the final alignment within a corridor that aligns with the design work performed to date. If the final design of the rail corridor stays within the transit buffer zone, the Project should be viable as planned. If the final design of the rail corridor goes beyond the transit buffer zone, many Project fixed costs (such as infrastructure) would remain the same, but development capacity would decrease, which decreases overall project feasibility. If this occurs, the available community benefits per square foot of office space will be impacted. The Development Agreement Section 4.2.2 provides a formula for determining this impact and outlines a process for eminent domain proceedings by the DISC Partner Agencies to eliminate or reduce potential impact to community benefits.

CONCLUSION

The Project's plan sets, documents, exhibits were updated to reflect all the modifications shared in this memorandum; updated resolutions and ordinances are linked on the City Council Agenda. In summary:

- Since the release of the Development Agreement on April 6, the City has engaged the public to generate comment through multiple venues.
- Certain changes have been made to the documents released on April 6 as final negotiations have been completed and the Development Agreement and select Entitlement documents have been refined.
- Although the Development Agreement provides certainty to both the City and Google, there are certain factors that may affect the project's timing, feasibility, and community benefits that are important for Council and the public to consider.
- Staff recommends that Council approve the use of \$7.5 million and \$22.3 million of previously-unallocated community benefits payments as proposed.

/s/

NANCI KLEIN

Director of Economic Development

For questions, please contact Nanci Klein, Director of Economic Development at (408) 535-8184.

RESOURCES

Project Webpages

- [Google Project Website - Application Documents and City's Review Process for Downtown West Project](#)⁵
- [Google's Project Webpage](#),⁶ - Social Infrastructure Plan, video, and other information

Shortcuts to Project Documents

- [Updated Development Agreement \(May 14, 2021\)](#)⁷

⁵ www.sanjoseca.gov/GoogleProject

⁶ <https://realestate.withgoogle.com/sanjose/>

⁷

<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/60a29a1210bcf63b5c1caec9/1621269033923/%28i%29+Ordinance+-+Downtown+West+Development+Agreement+-+051421.pdf>

- [Updated Project Plan Sets, Documents, and Exhibits since posting for Planning Commission](#)⁸
- [Environmental review page for the Downtown West Project](#)⁹

Public Meeting and Community Engagement Materials (2018-2020)

- [Info Memo on the Development Agreement](#)¹⁰
- [Video Recording \(English\) of the April 14th](#)¹¹ Station Area Advisory Group (SAAG) Meeting
- [Diridon Station Area Civic Engagement Report \(2018\)](#)¹² – including list of Desired Outcomes for the six topic areas
- [Spring 2020 Online Survey Results](#)¹³
- [Fall 2020 Community Engagement Info and Summary of Feedback Received](#)¹⁴
- [Information about Google's Updated Submittal for the Downtown West Project, Including Background Presentations by the City \(Process\) and Google \(Design Standards and Guidelines\)](#)¹⁵
- [Presentation for City Council Study Session \(November 16, 2020\)](#)¹⁶

ATTACHMENTS

- Appendix A: April 6, 2021 Info Memorandum summarizing the Development Agreement and Key Summary slides from SAAG presentation
- Appendix B: Public comments on the Development Agreement (including notes from the Station Area Advisory Group (SAAG) and Community meetings and online comment form)
- Appendix C: Menu of recommendations allocating the early \$7.5M community benefit contribution (of which \$3.0M will now be paid within 30 days of Council Approval) and the unallocated \$22.3M community benefit contribution
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⁸ <https://www.sanjoseca.gov/home/showdocument?id=72581&t=637562553613570000>

⁹ <https://www.bit.ly/GoogleProjectEIR>

¹⁰ <https://www.sanjoseca.gov/Home/ShowDocument?id=71001>

¹¹ <https://youtu.be/IQwDWAZpANU>

¹² <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

¹³

https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5f593395784ed35a65eb5cd5/1599681436414/DiridonSpringSurveySummary_08142020_final_web.pdf

¹⁴ <https://www.diridonsj.org/fall2020>

¹⁵ <https://www.diridonsj.org/fall2020-google>

¹⁶

<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5fb419f8b077c623dfc38c8f/1605638668019/Diridon+Study+Session++111620.pdf>

Appendix A



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: April 6, 2021

Approved

Date

4/6/2021

INFORMATION

SUBJECT: STAFF-RECOMMENDED DRAFT DEVELOPMENT AGREEMENT FOR GOOGLE'S DOWNTOWN WEST PROJECT

PURPOSE

- Provide the public with an overview of the staff-recommended draft Development Agreement for the Downtown West project, including the process informing its preparation and other background context.
- Support the Station Area Advisory Group (SAAG) in their review and discussion of the Development Agreement.
- Highlight the range of public benefit commitments expressed in the Development Agreement and delivered by the project.

EXECUTIVE SUMMARY

The City has been working with Google since 2017 to develop a project for the Diridon Station Area. The release of staff's recommended Draft Development Agreement for the Downtown West project is a key milestone in this journey, following adoption of a Memorandum of Understanding (MOU) in 2018, application submittal in 2019, and release of the Draft Environmental Impact Report (DEIR) in 2020. The Development Agreement is subject to City Manager and City Council review and approval.

The Development Agreement addresses the top priorities expressed by the City Council in 2018, which were reinforced through extensive community engagement from 2018 through the present. The Development Agreement addresses these priorities (affordable housing, anti-displacement, and jobs/education) as "Community Benefits." The Development Agreement also addresses

other topics that are important to the community, including parks and open space, transportation, and environmental sustainability.

The Downtown West project exceeds the Citywide requirements for affordable housing and supports the goal for 25% affordable housing in the Diridon Station Area through land dedication, use of commercial linkage and inclusionary housing in-lieu fees, and distributing affordable units amongst the market-rate housing. The equity-focused Community Benefits detailed in the Development Agreement also includes a first-of-its-kind "Community Stabilization and Opportunity Pathways Fund" that could generate up to \$155 million over 30 years, as Google builds out its 7.3 million gross square feet of office space. The Fund spans the interdependencies between housing, education, and jobs and is structured to involve community participation in the grant-making process.

Notably, the project would deliver over \$1 billion in infrastructure and project features with no subsidy from the City; an unusual feature for a project of this scale, leaving more General Fund money for the City to capture from the project. At full buildout, the total amount of Community Benefit contributions is expected to be \$200 million on top of the \$1 billion in infrastructure and project features proposed by Google. These project feature investments include 15 acres of parks, plazas, and green spaces; new walking and biking paths; historic preservation; ecological restoration; infrastructure improvements; year-round free entertainment programming and more. The Development Agreement details how the Downtown West project would provide well-maintained, activated, and publicly accessible private spaces and how the project would meet park and recreational requirements through building and dedicating 4.8 acres of turnkey parkland and trail connections.

Through an innovative district systems approach to utilities, LEED certification, and other environmental commitments, the project would set a new standard for climate action — generating zero net new greenhouse gas emissions during construction and 30 years of operations. The Development Agreement also facilitates ongoing coordination with the Diridon Integrated Station Concept Plan, in support of planned transit investments.

This memorandum provides background information, an overview of the Development Agreement, and next steps.

The City will hold a meeting of the Diridon Station Area Advisory Group (SAAG) on April 14 and a Community Meeting on April 17 to review and discuss the Development Agreement. Staff will provide all comments received at these meetings as well as from an online tool to the Planning Commission and City Council when they consider the full Downtown West project package later this spring. The website <https://www.diridonsj.org/> includes the upcoming engagement opportunities, project updates, background information, and the ability to sign up for email updates and submit comments.

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INITIAL PROJECT WORK (preceding the Development Agreement)

Phase 1 (Concept Development and Land Sale): In 2014, the City adopted the Diridon Station Area Plan (DSAP). In 2017, there was a need for an anchor use to replace the previously planned baseball stadium. Google expressed interest in developing office space near Diridon Station in Downtown San José, consistent with the vision set forth in the DSAP. In adopting the DSAP, the City recognized that realizing the vision of the DSAP would require a leading developer to assemble parcels. In June 2017, the City entered into an exclusive negotiating agreement (ENA) with Google for properties formerly owned by the Successor Agency to the Redevelopment Agency (totaling ~6 acres), the City-owned Fire Training property (~4 acres), and property next to SAP Center known as Lots A/B/C (~10 acres).

MOU: On December 4, 2018, City Council approved a [Memorandum of Understanding \(MOU\) with Google](#)¹ to guide collaboration on a mixed-use development project moving forward. The MOU outlined guiding principles and shared goals for a mixed-use, transit-oriented development to be proposed by Google. The MOU also affirmed the intent to negotiate a Development Agreement and the process for negotiating Community Benefits as part of the Development Agreement. The MOU was based on extensive community input and provided a foundation for the City’s review of Google’s application.

Land Sale: Also, at the December 4, 2018 meeting, City Council approved Purchase and Sales Agreements with Google for the former Redevelopment sites and the Fire Training property, as well as an Option/Negotiation Rights Agreement for Lots A/B/C. The December 2018 Council action completed staff’s work efforts from “Phase I: Concept Development and Land Sale” and launched “Phase II: Project Design and Review.” These 20 acres of land are in addition to the approximately 40 acres that Google purchased from private parties to assemble the project site.

Phase II (Project Design and Review): On October 10, 2019, Google submitted its application for a mixed-use development project (Downtown West Mixed-Use Plan) to the City. The project

¹<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5c9114de652dea9c2028888a/1553011936239/Final+MOU.pdf>

site is approximately 80 acres (including approximately 20 acres of right-of-way) and is largely within the existing [Diridon Station Area Plan \(DSAP\)](#)² boundary of 250 acres. The project proposes approximately:

- Up to 7.3 million gross square feet (GSF) of office space;
- 4,000 units of new housing (Draft EIR clears up to 5,900 units);
- Up to 500,000 GSF of active uses (retail, cultural, arts, etc.);
- 100,000 GSF of event space, hotel use (up to 300 rooms), and up to 800 rooms of limited-term corporate accommodations;
- 15 acres of parks and open space; and
- Infrastructure and utilities.

City's Review Process: The Google application includes a General Plan amendment (including amending the DSAP), a Planned Development Rezoning, a Planned Development Permit, and other related permits and approvals.³ The City is reviewing the project in three parallel processes: development review, environmental review, and Development Agreement negotiation. Development review involves staff from multiple departments reviewing the proposal for consistency with City policies, objectives, and regulations. Environmental review involves preparation of an Environmental Impact Report (EIR) to analyze and disclose the potential impacts of the project, consistent with the California Environmental Quality Act (CEQA).

AB 900: On December 30, 2019, the State of California approved Google's application to participate in the AB 900 program (Jobs and Economic Improvement Through Environmental Leadership Act). The program encourages the development of large projects that create jobs and that meet a high standard of public benefits by offering the streamlining of the judicial review process under CEQA (see [Info Memo dated August 19, 2019](#)⁴). The AB 900 program expired at the end of 2020, but the State legislature is currently considering an extension through Senate Bill (SB) 7.

Related City Efforts and Timing: Concurrent with reviewing Google's application, staff initiated a process to amend the DSAP and prepare a Diridon Affordable Housing Implementation Plan (AHIP). The focus of these planning efforts is on non-Google sites, although staff has ensured coordination with the Downtown West project, as appropriate. Staff also continues to support coordination of the Downtown West project with the Diridon

²<https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/citywide-planning/area-plans/diridon-station-area-plan>

³ Refer to project website for all application documents and additional information about the review process: www.sanjoseca.gov/googleproject

⁴<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5d5c5e61e1d5150001a6fdf2/1566334563522/DSA+Update+-+Info+Memo+-+081919.pdf>

Integrated Station Concept Plan (a partnership between the City, Caltrain, VTA, High-Speed Rail and the Metropolitan Transportation Commission), the Downtown Transportation Plan, and other separate but related projects.

Timing: Google's Downtown West project, along with the Amended DSAP and AHIP will all go to the Planning Commission and City Council for consideration later this spring (2021). Please refer to the City's project [webpage](http://www.sanjoseca.gov/GoogleProject) (www.sanjoseca.gov/GoogleProject) for the latest information on the public hearing process.

ONGOING COMMUNITY ENGAGEMENT

Central to all this work, staff is considering previous and ongoing community input in its evaluation and recommendation of the Development Agreement and other implementation documents.

2018: The first major milestone in the public process was the [Diridon Station Area Civic Engagement Report](#)⁵ (October 2018), which outlined a set of Desired Outcomes for the Diridon Station Area and Google project across six topic areas. It documented SAAG discussions and input from the general public. The SAAG was established in early 2018 to advise the City on issues affecting the Diridon Station Area, including the Google development project. Google began their own outreach in 2018 as well. The MOU with Google was based on the input gathered through the 2018 process.

2019-2020: Staff completed additional public outreach and community engagement before and after Google submitted its development application. The main objectives of this outreach were to increase understanding of the planning and development review processes and secure feedback on initial and draft concepts under consideration. This occurred over several rounds of Diridon Station Area outreach and engagement. In 2019, Google expanded its outreach and engagement efforts to understand community priorities and concerns, ultimately holding over 100 meetings and having conversations with thousands of local residents. This input informed the design and programmatic aspects of their application. In Spring 2020, the City conducted an online survey on draft concepts for the DSAP Amendment and trade-offs related to Community Benefits.

2020-2021: In Fall 2020, staff held or participated in more than 20 meetings about the Downtown West project and the related efforts, including six hosted by the City's community partners. This Phase was focused on collecting feedback on the draft plans made available in October 2020, including the Draft Downtown West Design Standards and Guidelines and updated application documents. In 2021, the City has continued with focused outreach and engagement to prepare for the public hearing processes. Google continued holding its own

⁵ <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

design workshops (pre-COVID) and has continued hosting virtual engagements and sharing informational videos (post-COVID).

Broad Outreach and Engagement Efforts: A consistent goal of the City's engagement process for the Diridon Station Area has been to hear from the full range of the San Jose community. The City completed grant agreements with seven community-based organizations to help reach and involve under-represented populations in the engagement process. These community partners are African American Community Services Agency, Catalyze SV, Friends of Caltrain, Latino Business Foundation, San Jose Jazz, SOMOS Mayfair, and Trinity Episcopal Cathedral.

The COVID-19 pandemic in March 2020 curtailed in-person outreach. Staff adjusted to continue outreach and engagement using online methods — enhancing diridonsj.org, creating videos, implementing online surveys, and hosting virtual meetings.

Since the beginning of the coordinated Diridon Station Area engagement process in February 2018, the City has hosted 18 SAAG meetings, 14 SAAG small group discussions, 30 community meetings, and partner events, three online surveys (2,260 responses), nine pop-ups at community events, and five virtual office hours. There have been 93,000+ web page views and 36,000+ visitors on diridonsj.org.

Collectively, the initial and ongoing community input over the last three years has helped shape the overall vision, shared goals, and top priorities for the project and its Community Benefits. The SAAG has been instrumental in representing a variety of needs and interests — including the many San Jose residents struggling with the high cost of living who need more affordable housing options, protections from displacement, and educational, job training, and employment opportunities. The SAAG has also been a key venue for convening neighborhood leaders, who have put in many hours to understand the proposed Downtown West project and the City's proposals and to advocate for consideration of local impacts and benefits. Many of the SAAG organizations have convened their own events over the past three+ years to hear from their community members and have reflected their needs, aspirations, and ideas during the SAAG meetings.

Community input, including the work of the SAAG, has been instrumental in shaping the Development Agreement. Doing this work well takes time and effort. The City is grateful for the thoughtful civic contributions of these individuals and organizations. The City also recognizes the significant outreach and engagement effort that Google has led and their responsiveness to incorporating community feedback into the Downtown West project.

DEVELOPMENT AGREEMENT BACKGROUND

Purpose: A Development Agreement is a tool that provides a consistent regulatory framework (also known as “vesting rights”) for a large development project that will be built out over many

years. Development Agreements are negotiated as part of the entitlement process and are typically approved along with other City actions enabling the project. In exchange for this certainty, developers often provide Community Benefits that go beyond any benefits from meeting City requirements.

MOU Foundation: As described in the Background section, the MOU with Google provides a foundation for negotiating the Development Agreement. It anticipates that the Development Agreement will include vested project approvals and Community Benefits, including a framework for community benefit delivery.

Community Benefit Methodology: In determining the value of the Community Benefits, the MOU intent is for Google to share back a portion of the additional property value created through the City's actions (such as rezoning and increased height limits), while taking into account the financial feasibility of the project. According to the MOU, the total value of Community Benefits shall not include any costs associated with (1) City requirements, (2) environmental mitigations, or (3) discretionary project Features proposed by Google.

Community Benefit Priorities: In identifying the Community Benefits, Council directed staff to prioritize three categories:

- Affordable housing;
- Displacement prevention and community stabilization; and
- Education, job training, and employment opportunities (including support for small businesses).

Subsequent community input has reinforced that these are the most pressing needs that should be addressed in developing the Community Benefits in the Development Agreement. Staff recognizes the interrelationship between affordable housing, community stabilization, opportunity pathways, and small business/employment opportunity. These are the pillars of Equitable Development — a shared goal in the MOU — and the collective investment in each can lead to better outcomes for San Jose residents, especially marginalized communities that too often bear disproportionate impacts.

In addition to these top priorities, community members also expressed interest in parks/open space, transportation (including transit, trails, bicycle, and pedestrian networks), environmental sustainability (including ecology and climate action), land use/design, and cultural and historic preservation. These topics are reflected in the shared goals for the project.

Distinction between Community Benefits and Public Benefits: Community Benefits are defined in the Development Agreement as contributions that go above and beyond standard City or State requirements and that are aligned with the Council priorities described in the MOU. The

Development Agreement and other project documents also provide other benefits. The broader term "Public Benefits" includes the Community Benefits, City requirements, environmental mitigations, and project features that Google has voluntarily agreed to implement and that support other goals articulated by the community, e.g., additional open space, trails, ecological enhancements, historic preservation, and sustainability features.

Process: Arriving at a staff-recommended Draft Development Agreement has required extensive analysis and ongoing community engagement. The release of the Draft Downtown West Design Standards and Guidelines and the Draft Environmental Impact Report in October 2020 marked major milestones. Since this time, the focus has been on preparing the Affordable Housing Plan and Parkland Agreement, and negotiating the other aspects of the Development Agreement, including the Community Stabilization and Opportunity Pathways Fund. The staff recommended Draft Development Agreement is now available at www.sanjoseca.gov/GoogleProject, for public review and is subject to City Manager and City Council review and approval.

DEVELOPMENT AGREEMENT OVERVIEW

If approved, the Development Agreement for the Downtown West project would be legally binding and enforceable over a 30-year term. It would deliver on public benefits in four main ways:

- Establishes the vested project approvals that lock in how the project will fulfill City requirements including requirements related to affordable housing, parkland, transportation, and infrastructure;
- Includes \$200 million in Community Benefits that address the City's top priorities and supports ongoing community involvement;
- Secures commitments on project features, such as local hire, privately-owned publicly accessible parkland, and environmental features such as a district systems approach to utilities; and
- Provides incentives for the timely delivery of public benefits through performance measures.

As described further in the following sections, if approved, the Development Agreement and the project itself would:

1. Provide land and funds to meet the 25% affordable housing goal for the Downtown West project;
2. Provide funds and a community governance structure to address displacement and expand economic opportunities for underserved residents through a new **Community Stabilization and Opportunity Pathways Fund**;
3. Enhance the public realm through a mix of publicly accessible **parks and open spaces**;

4. Improve the **transportation** system;
5. Advance **environmental sustainability, climate action, and resiliency** through a District Systems approach to utilities and other infrastructure investments; and
6. Provide for **historic preservation** to enhance the identity of the neighborhood.

Affordable Housing (Requirements + Community Benefits)

The City Council and Community have consistently prioritized affordable housing production and preservation, as well as anti-displacement strategies, as the top issues to address when planning for the Google project and future of the Diridon Station Area. The affordable housing package supports the goal for 25% of new housing to be affordable at a mix of affordability levels, ranging from extremely low-income to moderate-income.

The Downtown West application includes General Plan amendments and zoning changes that significantly increase residential uses throughout the site, and the Development Agreement contemplates 4,000 new housing units as part of the project (note that the EIR analyzes a maximum of 5,900 units).

The project is subject to several City requirements related to affordable housing:

- The **residential portion of the project** must comply with City's Inclusionary Housing Ordinance (IHO). As documented in the Development Agreement, the project will comply with the IHO by:
 - Dedicating three pad ready sites to the City (to be used for the construction of approximately 600 units for extremely low to low-income households);
 - Paying IHO fees for residential development once the credit from the dedicated land sites is exhausted; and
 - Providing 5% of the units built on-site for moderate income households (170 total) — to be integrated with market-rate housing.
- The **commercial office portion of the project** will pay the required Commercial Linkage Fee for office construction, which could generate up to \$87.6 million for affordable housing as Google builds out the 7.3 million gross square feet of office space.

The Development Agreement specifies that the City, subject to City Council appropriation of funding, will use a good faith effort to direct CLF generated from commercial development within the project site to the production of affordable housing on land transferred from Google to the City for affordable housing development and then to affordable housing production within the DSAP.

In addition to these required fees, Google will provide the following Community Benefits to increase the supply of new affordable housing (valued at about \$15 million dollars):

- Early dedication to the City of an additional 0.8-acre site located in the DSAP, outside of the Downtown West project. The City is recommending rezoning this site and, if approved, could allow for potentially 200 units of affordable housing.⁶
- Provide an additional 30 moderate-income units, integrated on-site within market-rate housing.

Overall, the project exceeds the City's baseline inclusionary housing requirements and supports the goal for 25% affordability for the Diridon Station Area through land dedication, use of fees generated by the project, and integrating affordable units on-site. The target is to provide 1,000 affordable units in the Diridon Station Area, based on 25% of the 4,000 units proposed by the Downtown West project. Of these units, roughly 600 units will be built on three sites dedicated by Google within the project site, and 200 additional units may be built on a site dedicated by Google outside of the project site (see footnote 6). Land dedication by Google and early release of three of these four sites allows the City to leverage external funding sources to achieve lower income limits (i.e., deeper affordability). Through the City's use of land dedication and fees and ability to leverage additional resources, the City is targeting 40-45% of the units built on dedicated housing sites to be available to extremely low-income households earning under 30% of the Area Median Income (AMI).

The total investment in new affordable housing **production** would be approximately \$183 million. In addition to production, the project would address affordable housing goals through investments in **preservation** and **protection** through a new fund, as described in the following section.

For additional information about the Affordable Housing plan, please refer to Development Agreement Exhibits C (Community Benefits) and D (Affordable Housing Program)

Community Stabilization and Opportunity Pathways (Community Benefits)

Consistent with community feedback and Council direction, the staff-recommended Community Benefits include a new "Community Stabilization and Opportunity Pathways Fund" (Fund). The Fund is a resource to *minimize displacement from rising costs* (Community Stabilization) and to *maximize opportunities for youth and adults to participate in job opportunities* through training education and support (Opportunity Pathways). The Fund recognizes that these challenges are systemic and interrelated. It would provide grants that are aimed at a measurable impact on community stability and economic opportunity for communities that have historically been

⁶ The City is considering changing the land use designations and zoning of the Autumn Street site (located outside of the Downtown West project site but within the Diridon Station Area) to allow for residential uses and approximately 200 affordable housing units, subject to subsequent clearances and discretionary approvals.

affected by structural racism and where risk of displacement is the highest, including East San Jose and Greater Downtown.

Community Stabilization. In addition to producing new affordable housing, the Fund would apply to the following priorities articulated by Council and the community related to housing:

- Preventing displacement and homelessness through the preservation of existing affordable housing;
- Increasing services and shelter for people experiencing homelessness;
- Pursuing new models of community ownership; and
- Increasing protections for low-income renters.

Opportunity Pathways: Hand in hand with stabilizing housing costs, the City Council, SAAG, and public have generally agreed on the importance of helping San Jose residents of all skill and educational levels and diverse backgrounds to prepare for and secure good-paying jobs.

Accordingly, the Fund would support these priorities:

- Programs and services related to adult and youth occupational skills training;
- College/post-secondary scholarships;
- Career exploration for middle and high school youth;
- Early childhood education; and
- Small business and entrepreneurship support.

Contributions: The project would contribute \$21.20 per gross square foot of office to the Fund as office buildings are completed (up to \$154,760,00 million if the commercial office capacity of 7.3 million gross square feet is built out). For example, for a million square feet of office completed, the project would contribute \$21.2 million to the Fund.

Structure: The Fund structure emphasizes the importance of a decision-making process that:

- Balances technical expertise and lived experience;
- Amplifies local voices and empowers residents of impacted communities;
- Focuses on equity; and
- Provides a data-driven and transparent decision process.

The recommended structure features a third-party Fund Manager and a Community Advisory Committee, with City oversight and support. The Committee includes representation from local residents (representing the lived experience of impacted communities), direct service providers and other technical experts.

Following final approval of the Development Agreement, the City would need to adopt an ordinance to create the Committee. Next steps would be selection of Committee members and the Fund Manager. The Fund Manager would then work with the Committee to prepare a Five-

Year Strategic Plan for City Council approval. As contributions to the Fund come in, the Fund Manager would administer the grant-making process and recommend qualified grant recipients to the Committee for approval, consistent with the Strategic Plan. Putting decision-making authority in the hands of local residents and leaders to drive equity-focused outcomes is a unique model, compared to similar funds in the U.S.⁷

For additional information about the Community Stabilization and Opportunity Pathways, please refer to Exhibit H of the Development Agreement.

Early Payment (Community Benefit)

In addition to the Fund, as part of the Community Benefits, Google will make an early payment of \$7.5 million to the City for job readiness and community stabilization, in support of existing City strategies such as the City's Citywide Residential Anti-Displacement Strategies. Staff will make specific recommendations for the use of this early payment and Council will allocate the funds as part of the approval package.

The intent is to invest early in these two critical areas, ahead of office building completion (when the Fund will be set up and begin to receive contributions from the project).

For additional information about the Early Payment, please refer Exhibit C of the Development Agreement.

Additional Project Commitments to Jobs & Opportunity (Community Benefit)

In addition to improving opportunity pathways through education and job training through citywide programs, the MOU and community feedback encourage Google to directly advance economic opportunity through using progressive hiring practices, prioritizing the hiring of local residents, providing opportunities to local businesses, and offering programs that connect their employees to local youth. Accordingly, Google has committed to the following as discretionary project features in the Development Agreement:

- Prevailing wage for all on-site construction workers;
- 30% local hire goal for on-site construction positions;
- Ongoing collaboration with work2future and good faith efforts to hire local residents;
- Support for disadvantaged businesses through
 - Providing 10% business inclusion target for disadvantaged businesses, for commercial office building construction;
 - Working with vendors to secure ongoing service contracts for office buildings;
- Promotion of Google employee volunteer/mentorship programs;

⁷ This is based on research completed by Estolano Advisors, who worked with the City and Google to identify and evaluate potential fund structures.

- Career development workshops targeted for underserved communities; and
- Ongoing monitoring and reporting.

For additional information about Economic Opportunity, please refer to Exhibit G of the Development Agreement.

Parks and Open Space (Requirements/Project Features)

The community-driven goals for the public realm include a variety of publicly accessible amenities, including parks, open space, plazas, and trails; improving the connectivity of the open space and trail networks; activating public spaces through temporary and permanent programming; keeping new and existing spaces well-maintained, safe, and accessible; and ensuring spaces are welcoming to all.

Through a mix of discretionary project features and City requirements, at full buildout the project will provide up to 15 acres of open space, including 4.8 acres of improved public parks and trails (dedicated to, and operated and maintained by the City,) and approximately 10.2 acres of privately owned publicly accessible open spaces (where the ongoing maintenance and programming would be funded by the project applicant, rather than the City). These privately owned open spaces will have similar hours as City parks and will offer community rentals of reservable areas and year-round free programming.

The approach to open space emphasizes access and proximity across the Downtown West project, rather than concentrating all the open space in one area. This approach to public open space fits the urban context, provides safe and pleasant connectivity for bikes and pedestrians, and complements the other large open spaces in the vicinity.

For additional information about Parks and Open Space, please refer to the main body of the Development Agreement, and the Parkland Agreement (Exhibit E of the Development Agreement).

Transportation (Requirements/Project Features)

The shared goals in the MOU and community feedback both call for the project and City to:

- Create attractive, vibrant, and safe experiences for pedestrians and bicyclists;
- Provide multimodal connections to Diridon Station, Downtown, adjacent neighborhoods, and the open space network (Guadalupe River, Los Gatos Creek);
- Contribute to ambitious citywide targets for reduced car travel;
- Proactively manage car parking to adapt to changes in travel patterns, minimize land dedicated solely to parking, and encourage shared parking across the district;
- Provide convenient access to the SAP Center;
- Support a functional, accessible, and seamless public transit system for all users;

- Allow adaptability (accommodate future mobility options); and
- Facilitate a safe, operational transportation system during construction work.

Consistent with these objectives, the project includes multimodal transportation improvements throughout the project such as efficiencies to the street network, expanded sidewalks, bikeway facilities, electric vehicle charging stations, and dynamic lanes — flexible space that can be used for multiple purposes over time. These project features are reflected in the infrastructure plans and Downtown West Design Standards and Guidelines.

As part of the development review process, the City required preparation of a Local Transportation Analysis (LTA) to evaluate the project against City policies and identify any necessary improvements to the transportation system. As required by the LTA, the project will provide about \$30 million in improvements, including: complete street improvements along Barack Obama Boulevard, support for transit projects recommended in the Diridon Station Area Plan, multimodal improvements to Auzerais Avenue, and \$10 million for local needs identified in future Focused LTAs. These will be documented as Conditions of Approval for the project.

Also consistent with City policies, the project will provide shared, publicly available parking in conjunction with commercial development (4,000 spaces at full buildout). Residential parking will be rented or sold separately to lower housing costs for those who choose to live without a vehicle.

As part of the environmental requirements, the project will prepare a Transportation Demand Management (TDM) plan to manage traffic and emissions, limiting solo occupancy vehicle trips to a maximum of 35%, with penalties up to \$5 million per year for non-compliance.

The Development Agreement also provides for coordination with the ongoing Diridon Integrated Station Concept Plan (DISC) effort. This includes:

- Reinforcing shared MOU goals and ongoing collaboration;
- Establishing a Transit Project Buffer Zone in anticipation of land that may be needed to construct rail improvements; and
- Including provisions on temporary construction easements, long-term park use, and community benefit implications.

For additional information about Transportation, please refer to the main body of the Development Agreement and Exhibit K.

Environmental Sustainability, District Systems, and Ecology (Project Features)

Community input for the project also included advancing the City's sustainability goals: supporting the "Climate Smart San Jose" Plan; reducing greenhouse gas (GHG) emissions;

adhering to LEED Gold or Platinum standards for green building; serving as a model for eco-district planning, design, and implementation; exploring a district systems approach; and restoring and enhancing the wildlife habitat, water quality, and flood protection of the creek corridors.

Consistent with the MOU, the City and Google have studied a district-wide program of shared utilities. As a voluntary project feature, the Google proposes a sustainable "District Systems" approach to the provision of certain utilities, such as energy (heating and cooling), electricity (microgrid), wastewater treatment, and recycled water.

The project documents subject to City Council approval will incorporate City goals related to District Systems to ensure proper design review, permitting, and oversight of the onsite wastewater treatment and electrical infrastructure; continuity of District Systems services; properly maintained and operated infrastructure, and rate equity.

In addition to District Systems and meeting existing City Green Building Codes, discretionary project features related to sustainability include:

- Zero net new greenhouse gas emissions during construction and 30 years of operations;
- Enhancements to the riparian habitat;
- Design for bird safety and night sky controls;
- All electric development;
- 2,200+ new trees;
- 100% native plant palette;
- Replacement of San Fernando Bridge to reduce flood risk;
- 7.8 megawatt of on-site solar energy production; and
- Designed to be eligible for LEED-ND Gold certification

Through these environmental requirements and commitments, the project would set a new standard for climate action and ecological enhancements.

Historic Preservation (Project Features)

The MOU and community feedback include the goal to preserve and integrate historic and cultural assets into the project design to reinforce the identity of the area. Discretionary features of the project include retaining, relocating on-site, or partially salvaging six of the nine historic resources under CEQA. The resources to be retained and repurposed include the San Jose Water Company Building (374 W. Santa Clara Street); Kearney Patternworks and Foundry building (40 S. Montgomery Street); and Hellwig Ironworks building (150 S. Montgomery Street). A grouping of three Victorian bungalows on Julian Street (559, 563, and 567 W. Julian Street) and the Stephen's Meat Products sign would be relocated on-site. Portions of the facade of the Sunlite

Bakery Building (145 S. Montgomery Street) would be salvaged and incorporated into the project.

As required by the EIR, the other three historic resources would be available for others to purchase and relocate. In addition to the CEQA historic resources described above, the project will also relocate the buildings at 35 S. Autumn Street on-site; support the relocation of the building at 91 S. Autumn Street (Poor House Bistro) off-site; and support the relocation costs of other on-site structures of merit (including eligible) to off-site locations, if property owners elect to receive them, up to the equivalent cost of demolition.

Community Benefits Valuation and Timing

In determining the valuation of the Community Benefits, the MOU intent is for Google to share back a portion of the additional property value created through the City’s actions (such as rezoning and increased height limits), while taking into account the financial feasibility of the project. Consistent with the MOU framework, the following costs are not considered Community Benefits: costs required to mitigate impacts under CEQA; costs associated with project design, project elements, or other improvements proposed by Google as part of its development; and costs incurred to meet City standard requirements, conditions of approval, fees, or taxes.

The following table illustrates the value of the Community Benefits by category. One of the distinguishing factors of this agreement is that all Community Benefits are focused on equity and are directed at low-income individuals, in the form of related anti-displacement and opportunity components. Other Development Agreements tend to focus the Community Benefits on parks and sustainability. This Development Agreement achieves parks and sustainability goals, but as part of meeting baseline requirements or voluntary project features, not as Community Benefits. Some of the Community Benefits will be delivered early on, while others are tied to the development of office space and will be delivered over time.

	Community Benefit Value (at 7.3M GSF)	\$/per GSF of Office	Timing
Community Stabilization and Opportunity Fund	\$154.8 Million	\$ 21.20	As office gets built
Early Payment for Job Readiness and Community Stabilization	\$7.5 Million	\$ 1.03	120 days after Final Approval*

30 Additional Moderate-Income Units	\$7.0 Million	\$ 0.96	With market-rate residential development
Land Transfer to the City (0.8 acres for consideration of affordable housing) ⁶	\$8.4 Million	\$ 1.15	3 months after Final Approval*
Currently Unallocated Community Benefit Commitment	\$22.3 Million	\$ 3.06	As office gets built
TOTAL	\$200 Million	\$ 27.40	

* “Final Approval” means following City Council approval of the project documents and resolution of any legal challenge to those approvals.

At full buildout, the total amount of Community Benefit contributions is expected to be \$200M on top of more than \$1 billion in voluntary project features proposed by Google. As previously described, these project feature investments include 15 acres of parks, plazas, and green spaces; new walking and biking paths; historic preservation; ecological restoration; infrastructure improvements; year-round free programming; and more.

Oversight and Performance

The Development Agreement is legally binding and enforceable and requires an annual review of the performance and compliance by the Planning Director and a report to the Planning Commission. The City cannot force Google to build, but the Development Agreement includes requirements for performance to maintain Development Agreement rights, including milestones at 10 or 20 years, which respectively require completion of 2 and 4 million GSF of office *or* payment of Community Benefits on the equivalent amount of office. In addition, Google is limited to transferring office development rights/land to no more than 40% of constructed office square footage to ensure growth of jobs and tax base.

NEXT STEPS

The City released the staff-recommended Development Agreement to the public on April 6, 2021. The City will hold a meeting of the Diridon Station Area Advisory Group (SAAG) on April 14, 2021 and a Community Meeting on April 17, 2021 to review and discuss the Development Agreement. The public may also comment on the Development Agreement using

an online tool. Staff will provide all feedback received to the Planning Commission and the City Council, for their consideration. Visit <https://www.diridonsj.org/> for more information.

/s/

Nanci Klein

Director of Economic Development

For questions, please contact Nanci Klein at (408) 535-8184.

RESOURCES

Project Webpages

- [Google Project Website - Application Documents and City's Review Process for Downtown West Project](#)⁸
- [Google's Project Webpage](#),⁹ - Social Infrastructure Plan, video, and other information

Shortcuts to Project Documents

- Staff-recommended Development Agreement
- [Draft Environmental Impact Report \(DEIR\) for the Downtown West Project](#)¹⁰

Community Engagement Materials (2018-2020)

- [Diridon Station Area Civic Engagement Report \(2018\)](#)¹¹, including list of Desired Outcomes for the six topic areas
- [Fall 2020 Community Engagement Info and Summary of Feedback Received](#)¹²
- [Information about Google's Updated Submittal for the Downtown West Project, Including Background Presentations by the City \(Process\) and Google \(Design Standards and Guidelines\)](#)¹³
- [Video](#)¹⁴ (timestamp: 7:30 to 53:30): presentation from the Downtown West Community Meeting on Oct. 19, 2020
- [Downtown West Community Meeting \(October 19\) Materials](#)¹⁵
- Presentation for City Council Study Session (November 16, 2020)

⁸ www.sanjoseca.gov/GoogleProject

⁹ <https://realestate.withgoogle.com/sanjose/>

¹⁰ <https://www.bit.ly/GoogleProjectEIR>

¹¹ <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

¹² <https://www.diridonsj.org/fall2020>

¹³ <https://www.diridonsj.org/fall2020-google>

¹⁴ <https://www.youtube.com/watch?v=ddmcFntNG7A&feature=youtu.be>

¹⁵ <https://www.diridonsj.org/general-events/community-meeting-downtown-west-fall2020>

HONORABLE MAYOR AND CITY COUNCIL

April 6, 2021

Subject: Staff-Recommended Draft Development Agreement for Google's Downtown West Project

Page 20

- [Summary of the City's 2018 Community Engagement Process](#)¹⁶

Related Plans

[Citywide Residential Anti-Displacement Strategy](#)¹⁷

[Draft Amended Diridon Station Area Plan](#)¹⁸

[Draft Diridon Affordable Housing Implementation Plan](#)¹⁹

General

[Background Information](#)²⁰

[FAQs, Info Memos, and Other Resources](#)²¹

[Station Area Advisory Group \(SAAG\) Webpage](#)²² with past meeting materials

¹⁶ <https://www.diridonsj.org/archive>

¹⁷ <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/housing-policy-plans-and-reports/citywide-anti-displacement-strategy#:~:text=By%20focusing%20attention%20on%20Production,greatest%20asset%20%2D%20its%20existing%20residents>

¹⁸ https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5f9783e6506bd2232c50f52e/1603765259907/20201026_D_SAP_Report_web.pdf

¹⁹ <https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5fa9c16b09511e6a4e5a07b4/1604960644280/Draft+Diridon+Affordable+Housing+Implementation+Plan.pdf>

²⁰ <http://www.diridonsj.org/diridon-station-area-plan-google-project>

²¹ <https://www.diridonsj.org/resources>

²² <http://www.diridonsj.org/saag>



Diridon Station Area Advisory Group (SAAG) Draft Meeting Notes | April 14, 2021

Date + Time *April 14, 2021 | 6:00 PM*

Location *Zoom Webinar – Virtual Meeting*

Meeting Objectives

- *Provide a brief update on the Diridon Station Area engagement process.*
- *Review and discuss the staff-recommended Draft Development Agreement for the Downtown West project.*

AGENDA

1. Welcome and Introductions
2. Meeting Minutes from SAAG Meeting on November 9, 2020
3. General Process and Community Engagement Update
4. Downtown West Development Agreement
5. Public Comment
6. Adjournment

ATTENDANCE

SAAG Members: 26 of the 38 SAAG members were present at the meeting (*please see the Meeting Minutes posted to the project website for the names of SAAG members that were present*)

City Staff/Presenters:

- *Lori Severino – Diridon Program Manager*
- *Nanci Klein – Director of Economic Development*
- *Rosalynn Hughey – Director of the Planning, Building, and Code Enforcement Department*
- *Robert Manford – Deputy Director, Planning Building and Code Enforcement*
- *Tim Rood – Planning Division Manager*



- John Tu – *Planner IV, Planning Division*
- Jose Ruano – *Planner II, DSAP Project Manager*
- James Han – *Planner II, Planning Division*
- Nicole Burnham – *Deputy Director of Parks, Recreation, and Neighborhood Services*
- Jessica Zenk – *Transportation Deputy Director*
- Eric Eidlin – *Station Planning Manager*
- Rachel VanderVeen - *Deputy Director, Housing Department*

Consultant Team:

- Dave Javid, Paul Kronser and Suhaila Sikand (*Plan to Place*)
- Matt Raimi and Diana Benitez (*Raimi + Associates*)

Public: There were approximately 70 members of the public present at the Zoom call, or via the local public broadcasting or YouTube Live.



MEETING SUMMARY

The primary agenda items were to provide a brief update on the engagement process and to review and discuss the components of the staff-recommended Draft Development Agreement for the Downtown West project. Nanci Klein welcomed everyone to the meeting and Dave Javid, from Plan to Place followed with approval of the last SAAG meeting minutes (November 9, 2020) and Agenda Overview. Staff then gave a presentation, followed by a round of comments and questions from SAAG members. Staff responded to questions and reiterated appreciation for the SAAG's time and input. The meeting ended with public comments and adjourned around 8:20pm.

The full set of meeting materials, including the agenda, presentation, video recording, draft minutes, and information distributed in advance, are available at: www.diridonsj.org/saag. Background information about the Development Agreement and [Frequently-Asked Questions about the Downtown West Project \(April 2021\)](#) are available at: www.diridonsj.org/downtownwestda.

SAAG Discussion

The following summarizes the SAAG comments following the presentation. Responses to questions by City staff are represented in *italics* below.

- For years the Sharks have supported the DSAP vision and we signed a letter of intent to work towards development. We were under the assumption that the development agreement would protect parking. We have provided comments to advocate for the preservation of existing access and parking and to protect the arena during construction. None of our requests have been taken into consideration, and we feel the development should not proceed at the cost of the arena. We cannot support the project as currently proposed.
 - *Nothing has changed the fact that the Sharks are incredibly important to San José. Our teams have been working to find very solid ways for patrons to get in/out of the arena. We value the Sharks as partners, so we can come to a place where we will all be happy. [See the [Frequently-Asked Questions about the Downtown West Project \(April 2021\)](#) for more information].*

- I appreciate the collaborative nature of this whole process and the commitment made to Transit Oriented Development (TOD). This aligns with the High Speed Rail (HSR) statewide plan to build housing around our stations. We look forward to continuing to work together to implement our project and others in the Diridon Area.
- Thank you to the Google and City staff for coming together to create a Development Agreement (DA) of this caliber. I am delighted and anxious to welcome Google and their development to my neighborhood. Google is setting a top notch standard for design, infrastructure, fee structure, and community outreach. I hope the City will require the same thoughtfulness and standard for all developers in the DSAP area. Generally, a project's feasibility is based on how strong the financial benefit is for the developer. We must remember the impact development has on our neighborhoods and ensure that high design standards are applied to the whole DSAP.
- Thank you Google for all the time spent walking the neighborhood and getting to know us as people and create an agreement that includes us in the design scheme. Hopefully other developers will be held to the same standards. I would like assurance that the community benefit funds won't get lost in the paperwork as staff and direction changes (e.g., different council members, mayor). How can we can guarantee City oversight for this fund?
 - *The DA is legally binding. There will be an annual performance review that goes to the Planning Commission. The specifics you heard are embedded in DA. You can read DA and exhibits - there is an index to help you. We share your concern about oversight. We need to make sure that as staff and council changes, the DA moves forward as intended. We appreciate the comment and it will be taken to Council. There is a lot of work on Anti-displacement including City policies, eviction moratoriums, and how the stimulus fed dollars are used. There will be an intensive effort going forward for that. Staff acknowledges that this project raises all boats and expectations of what is possible in San José.*
- I am excited to see this DA, and that the community would be the lead in Fund decision making. I am glad that the Fund is focusing on anti-displacement. COVID has exacerbated the existing housing deficit and disproportionately impacts low-income residents. We have seen 21% increase in the demand for our services (Law Foundation of Silicon Valley). Thank you to the City and to Google

for your hard work and looking forward to seeing this move forward!

- Thank you Google for committing to an integrated agreement. The DA offers a good start to parks and trails and I am hoping for additional money to be put toward surrounding neighborhood improvements if there isn't enough space within DSAP. I would like to ask the City to hold other developers, especially within the DSAP, to the same standards to which Google has been held, and to make sure the standards to which Google is being held are maintained, particularly for parks. Thanks to the Sharks, we really want to support them, and the surrounding neighborhood equitably, so the traffic management plan should consider impacts.
- Thank you to the City for listening and engaging in dialogue. Listening is key in this process. As we move to the next round, please involve the Community Land Trust, which supports community dialogue and empowerment. Please continue to center the voices of the people that are most impacted and draw on the living experiences of people. Those closest to the pain are closest to the solution.
- Residents are excited about this project and we have great support from City staff and the Department of Transportation. I would request that all parties consider that our impact zone extends outside of the DSAP boundary. For example, mitigating traffic intrusion issues, such as those on Laurel Grove and Bush. Let's make sure that these continue to be monitored and considered. We appreciate being heard and seeing the change occur.
- I commend Google and City Staff for their leadership and patience. This process has effectively integrated competing interests. We have supported the project from day one. This is a significant investment that will go beyond the City's benchmarks for housing and open space, and the agreement will be a paradigm for other cities. I appreciate the efforts to provide connectivity and the \$10M set-aside for transportation is good. We are a business focused organization (San José Downtown Association), and also understand the need to include systems that support business such as housing, open space, etc. Regarding the community benefits, we think job education, training, and employment opportunities are a priority. We have 30 years of supporting small businesses in the downtown core and can be a key partner in this business stabilization endeavor. Re-training workforce will be important as well as bolstering current business operations.

- San José State has been downtown San José's largest employer and largest landowner, and the City's public university, transforming students' lives in San José and Silicon Valley for over 150 years. SJSU would welcome Google's presence in downtown San José to further transform the city into a destination where all of us can work, live, play and grow.
- I want to commend the City and Google for driving this thoughtful process; it has resulted in a vast Community Benefits package. I continue to support this TOD.
- These development standards should be the norm for the City, they are top notch. Can we get clarification on the Mayor's comments that the depot is going to be relocated? I appreciate Google's willingness to work with the broader community, which needs to encompass all areas. I look forward to the next phase of community involvement.
 - *The historic depot is a gem - many people love it. To date, only conceptual work has been done, which shows us that we really need to rethink if the station can operate at the level it should and if we can leave it where it is. The next step is to get into much more detail and consider options such as re-location or keeping it in place. This study has not yet been done, but will be done in the future. [Note that since the meeting, the City has worked with Caltrain to add a response to this question in the [Frequently-Asked Questions for the Diridon Integrated Station Concept Plan.](#)]*
- I am excited for this agreement, and think the community benefits are well thought out. This proposal does a great job with community stabilization to help prevent displacement and focus on connections. Prioritizing community input as part of the process can inform future partners and will be a continuing resource. I hope we can work with Sharks and come to an agreement.
- I would like to acknowledge union members and working members who have showed up to make their voices heard. Google and the City listened and as a result there are significant benefits for community and working people including commitments to high-quality blue-collar jobs. The question I've had throughout the process is, will people who build and work on the campus be able to live in San José? I am happy to see that there's commitment to make that happen. Thanks for hearing our voices, we've created something special and it should be a model moving forward.

- Thanks to the City and Google for working with us and all surrounding stakeholders.
- We wanted to make sure decision makers were listening and that this project would be a model for the region and country. Thousands of people showed up and spoke up, and what we heard today is that the City listened. I echo that tenant education and organizing is critical and should be considered for allocation of the early money.
- We are excited about the housing components. The 4,000 new homes will help jumpstart housing across the area and create a vibrant neighborhood. I like that Google worked with the City to meet the 25% affordability goal and are excited to see 1,000 deed-restricted homes. We like the approach of combining some on-site units and dedicated parcels, so the City can reach deeper levels of affordability and bring some of the affordable homes online as soon as possible. Getting parcels early is a great opportunity to leverage Measure A funds and get homes for some of our most vulnerable neighbors. The community benefits package will be a tremendous resource to respond to needs of tenants, support preservation, and help counter displacement pressure – including beyond Google’s footprint. We are also supportive of staff’s DSAP Amendments, which will help us get to our goal of 15,000 new housing units over the station area. This will require ongoing work and continued community engagement to meet our goals. We are committed to staying involved as a partner.
- I offer strong support for the package outlined today. The community benefits package is a model for development in the tech sector for community displacement and creates power structures for those to have a voice in these strategies. This is an enormous opportunity to do something that hasn't been done before. It is smart to invest in anti-displacement activities. Providing access to legal services for eviction, and access to state/federal resources to prevent eviction is essential.

PUBLIC COMMENTS

The following is a brief summary of public comments following the SAAG discussion.

- I am concerned that the Chicano community has not been articulated in these conversations. Silicon Valley Rising and SOMOS are not representative of Latinos. The property that Google bought from the city is not legitimate and historic redlining denied people of color access to this area. Mexicans were not allowed equal protection under the law.



- I appreciate the presentation and questions on the DA and city fees. I have reviewed the project and believe that Google and the City have been listening.
- I would like a better understanding of the Sharks' parking requests. It is great news if the Depot can be saved. I would stop planning for two high speed rails underground in Downtown West, they require more than 2 months to construct.
- I see a lot of large mega projects and this one is the cream of the crop. The SAAG, City staff, and community have put in a lot of work. The significant community benefits package, infrastructure, and affordable housing at no cost to the City is a once in a lifetime transformative proposal. This should be a standard, but may be hard for other private developers to meet.
- Having a union job with awesome healthcare has made such a difference in my life. Google's commitment to quality service jobs and affordable housing is appreciated. It means service workers like me can have a stable life in San José!
- How will the historical neighborhood going up in the Stockton Avenue area work? The future potential of high speed rail going through Alameda County is an interesting concept. Do the heights of buildings account for the southern flyaway area? I don't think those can be over 120-150'. Height has been an issue in the past. Regarding the East side, this is similar to the Vancouver downtown.



San José Diridon Station Area

COMMUNITY MEETING SUMMARY

Date and time: April 17th, 2021, 10:00am - 12:00 pm

Format: Zoom Meeting

Purpose: to share information and receive comments on the Draft Development Agreement for Google's proposed Downtown West project

Agenda:

1. Welcome, Interpretation, and Live Poll
2. Introductions and Agenda Overview
3. Staff Presentation on the Draft Development Agreement:
 - a. Background + Context
 - b. Development Agreement overview
 - c. Affordable Housing
 - d. Community Stabilization and Economic Opportunity
 - e. Parks/Open Space
 - f. Transportation
 - g. Environmental Sustainability and District Systems
 - h. Historic Preservation
 - i. Community Benefits Value
4. Participant Small Group Discussions facilitated by the City's community partners: SOMOS Mayfair, African American Community Service Agency (AACSA), and Trinity Episcopal Cathedral
5. Report-back and Wrap-up

Project Team Members in Attendance:

City Staff/Presenters

- Nanci Klein – *Director of the Office of Economic Development (OED)*
- Lori Severino – *Diridon Program Manager*
- Rosalynn Hughey – *Director of the Planning, Building, and Code Enforcement Department*

- Bill Ekern – *Diridon Project Manager, OED*
- Tim Rood – *Planning Division Manager*
- John Tu – *Planner IV, Planning Division*
- José Ruano – *Planner II, DSAP Project Manager*
- James Han – *Planner II, Planning Division*
- Rachel VanderVeen - *Deputy Director, Housing Department*
- Nicole Burnham – *Deputy Director of Parks, Recreation, and Neighborhood Services*
- Eric Eidlin – *Station Planning Manager, DOT*
- Lori Mitchell/Matt Cano - *District Systems*

Consultant Team

- Dave Javid, Paul Kronser - *Plan to Place*
- Diana Benitez, Alessandra Lundin, Wenhao Wu – *Raimi + Associates*

Community Partners

- Oliva Ortiz - *SOMOS Mayfair*
- Matt Gustafson - *SOMOS Mayfair*
- Andrea Portillo - *SOMOS Mayfair*
- Lupe Guerrero - *SOMOS Mayfair*
- Oladotun Hospidales - *African American Community Service Agency (AACSA)*
- Steve Sosnowskli - *Trinity Episcopal Cathedral - Downtown*

Link to slideshows: [Presentation](#) (English), [Presentación En Español](#) (Spanish), and [Trình bày tiếng Việt](#) (Vietnamese)

Link to outreach flyers: [English](#), [Folleto en español](#) (Spanish), [tiếng Việt](#) (Vietnamese)

MEETING OVERVIEW

On April 17th, 2021, the City of San José hosted a virtual community meeting to share information and receive comments on the Draft Development Agreement for Google's proposed Downtown West project. The meeting offered live interpretation services in Spanish and Vietnamese. Approximately 50 community members attended the meeting.

Dave Javid (Principal with Plan to Place, City's consultant) welcomed the meeting participants, made an announcement about live interpretation, and conducted a live poll. Nanci Klein (City's Director of Economic Development) introduced the project team and agenda. Staff then gave a presentation about the Downtown West project.

After the presentation, meeting participants were evenly distributed into five virtual break out rooms or small groups, for a facilitated discussion. Each group was facilitated by a member of the Community Partners that received grants to help the City with outreach and engagement over the last year. One of the breakout rooms was one held in Spanish.

Following the Small Group Discussions, facilitators reported back to the main group the key themes and takeaways that were discussed. Dave Javid then noted the upcoming meetings, including the Planning Commission Meeting on April 28th and the City Council Meeting planned for May 25, along with resources available on the project website (www.diridonsj.org).

After the meeting, the City posted [Responses to Frequently-Asked Questions on the Downtown West project \(April 2021\)](#), which address many of the questions raised at the Community Meeting. Other resources include:

- [Draft Development Agreement](#) (April 2021)
- [Info Memo](#) on the Development Agreement (April 2021)
- [Planning Commission Staff Report for the Downtown West project](#) (April 2021)
- [City's Google Project page](#) with all project documents and information about the City's review process
- [Google's Downtown West Project website](#)

Community members are encouraged to email the project team with any remaining questions:

- Lori at lori.severino@sanjoseca.gov for questions related to the Downtown West Development Agreement or community engagement questions
- James at james.han@sanjoseca.gov for other questions related to the project and the City's review process

POLL RESULTS

The live poll included demographic questions, a question about the topics participants were most interested in, and a question about participants' understanding of the project and previous engagement. The following is a summary of the poll results (see full results in the appendix below):

- 19% of respondents said they had not participated in previous Diridon Station Area engagement events over the past 3 years, while 31% said they had participated in “many” activities and another 44% said they had attended 1-4 events. The remaining 6% said they had not attended any events but had completed online surveys or feedback forms.
- 50% of meeting participants live in the Diridon Station Area and 33% said they live in another San José neighborhood.
- The most represented age group was between the ages of 25 to 44 (50% of respondents).
- Topics of interests that meeting participants were most interested in learning about included Anti-Displacement/Community Stabilization (50%) and Affordable Housing (22%).

SMALL GROUP DISCUSSIONS

During the Small Group Discussions, community members were encouraged to ask questions and offer comments on the presentation and Draft Development Agreement. The facilitators used the following discussion prompts:

- What do you think overall?
- Which types of strategies, programs, or outcomes would you prioritize to support job readiness and community stabilization using the early payment of \$7.5 million?
- What are your thoughts on the Fund concept, including the third-party manager structure and the composition of the Community Advisory Committee?

The following is a summary of all comments and questions received across the five groups (x # indicates comments that were shared by multiple participants).

1. What do you think overall?

Support for Project and Process

- a. Good presentation, goals, principles and context. This is a good start, commend the City for getting the project moving so quickly and listening to the concerns about displacement. **x3**
- b. Credit to City and Google in engaging and developing a plan that is good for the city and Downtown. **x2**
- c. Continue to build accountability with meetings to inform the community on progress, decisions made, and any potential changes from the original plan. **x2**
- d. Google has been very good at engaging, walking neighborhoods as volunteers. Their engagement should be the norm for community engagement, not the exception. Others coming into the Diridon area should take the same approach.
- e. Appreciate the City efforts on communicating the plan.

Remaining Concerns

- f. Still hearing high-level information about this complex and extensive program and would like to see more about district-scale utilities and how it will work, and where that infrastructure will be in the Plan Area.
- g. Concerned that issues in the neighborhood are not being addressed including: food growth, housing, low park space and public access.
- h. In general, climate change does not have a voice. All of the undeveloped land should be food production.
- i. Chicanos are not represented in the Development Agreement.
- j. Concerned that the riparian corridor and public parks maintenance will fall on the City, not Google. Afraid this will lead to public parks deteriorating while private areas will be maintained. Parks should be maintained as well as or better than Google spaces.
- k. The Parks + Open Space plan does not have enough parkland or open space, which appears to be a form of discrimination. The concept of private pay to play is not OK.

- l. Concerned that a similar experience will happen as when Facebook moved into Palo Alto and people were being judged on how they looked.
- m. All real estate listings mention Google is coming which is causing a massive displacement, which is really happening.
- n. Make sure there is flexibility in what can be built.

Other Questions and Suggestions

- o. Seen the economy bump up with affordable housing being built. When employees come from Google, will they be first in line for new housing? Or will it be for anyone?
- p. What does affordable housing look like 20 years down the road?
- q. What are the types of programs and opportunities for local students and pipeline from, for example, San José State into the workforce?
- r. How do the transportation programs relate to the equity goals? How will transportation benefits go to all? And when will this occur in the process? For example, usually transportation benefits go to full-time employees and not necessarily employees in retail, janitorial, or contract work.
- s. If employees don't work directly for Google but are contractors (e.g., janitorial staff), will they be able to get these benefits? Ideally everyone who works in the area will have the ability to get a transit pass. Would like to see more commitment on transit passes.
- t. Look at unintended consequences on existing communities (e.g. displacement) as we see an influx of high-paying jobs.
- u. Placemaking - there are a lot of little things, but how does the project make this a district? How to encourage culture and identity? How to brand this area as distinct?
- v. Can you explain the oversight performance slide - Google can transfer 40% of constructed sq ft?
- w. Is there any research done on big companies investing in other areas, such as Urban Villages? Micro HQs can be spread throughout the city, so people don't need to commute as far.

2. Which types of strategies, programs, or outcomes would you prioritize to support job readiness and community stabilization using the early payment of \$7.5 million?

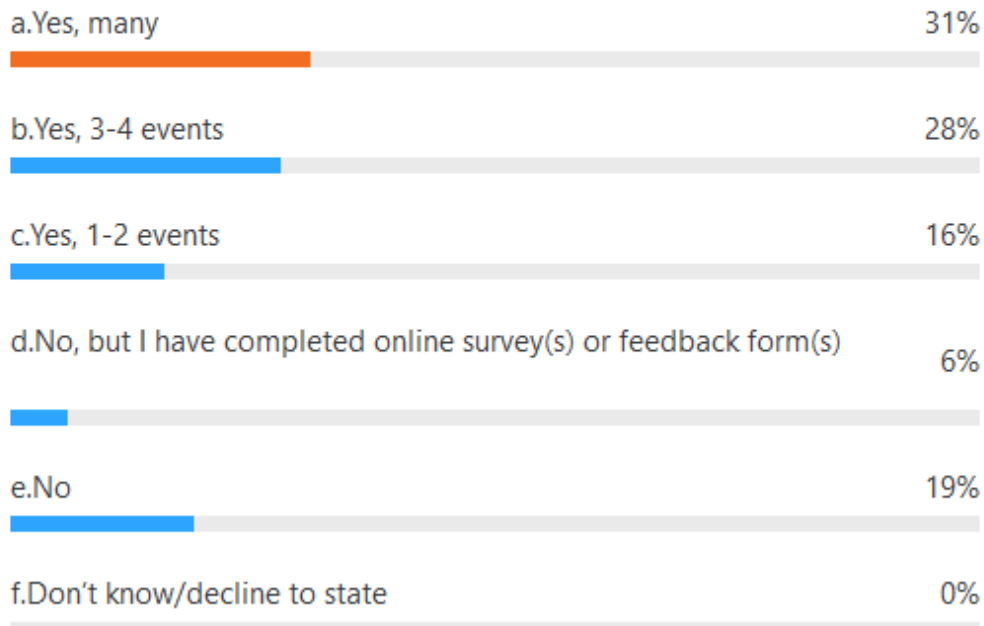
- a. Make sure that undocumented folks have access to resources. **x3**
- b. Would like for the first round of funding to focus on legal services for tenants facing eviction, community land trust, tenant education and organization. **x2**
- c. Housing support is needed for the most vulnerable. **x2**
 - i. To pay back rent and overdue utility bills
 - ii. To build truly affordable housing (low-income and homeless communities)
 - iii. To support rent stabilization and long term leases all around the City - not just rental speculation
 - iv. For tenant services and maintenance
 - v. For rent forgiveness
- d. Job training **x2**
 - i. There should be job training and it should start at the core of where poverty begins. Without a job, you can't keep paying rent and without rent you can't keep a job. Small programs are needed to start, and a plan to approach large corporations is needed.
- e. It is important to educate and inform the Latino community to get vaccinated. Vaccines and resources should be accessible via transit or available in various locations. We must think about access for these programs.
- f. The funding decisions need to be outcome oriented and to see the connections, such as support for job readiness.
- g. Would like to see a museum built to memorialize the progression of what has happened in the City.
- h. Public school facilities and funding tends to fall through the cracks because kids don't have stability at home. Added funding for after school activities would help.

3. What are your thoughts on the Fund concept, including the third-party manager structure and the composition of the Community Advisory Committee?

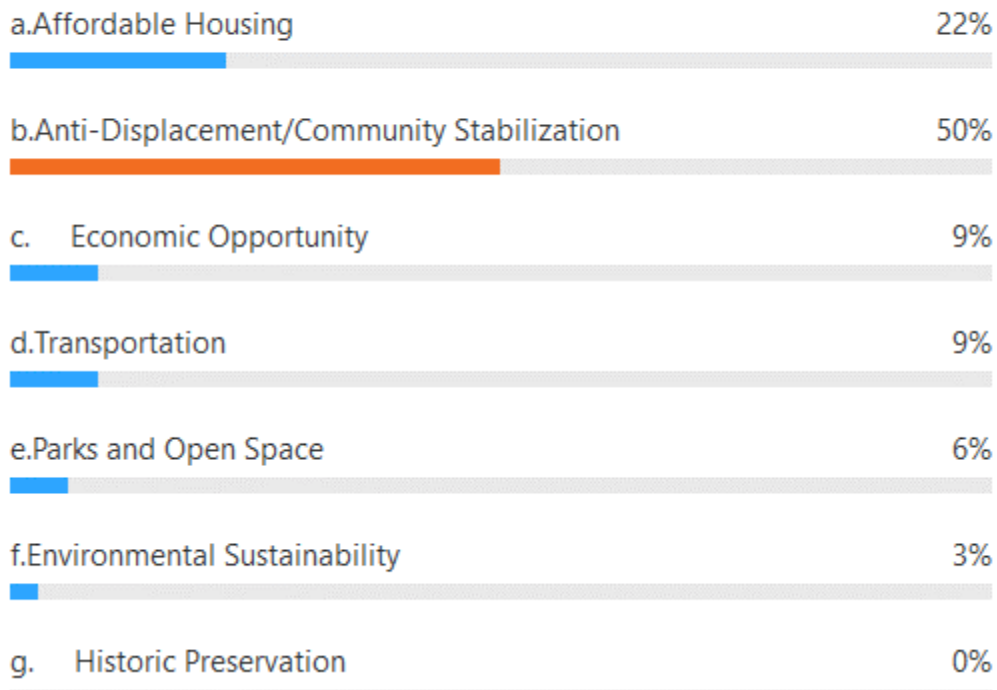
- a. Make sure to select the right people for the committee and that they actually think about the most vulnerable. This includes people with lived experience and community organizations (e.g., LUNA and Somos Mayfair)
x2
- b. This is the largest fund for the community in this region. Great to see this rare opportunity of community empowerment.
- c. There is hope that the first leg of the early funding will directly support the community and that a fund manager will be responsible for working with the committee to make decisions.
- d. Non-profits will garner political and financial power through this process.
- e. The Fund concept should not to be influenced by politics and be ethical:
 - i. There may need to be training of the community advisory committee on ethics.
 - ii. Make sure that these committee members are not influenced by external administrators or by non-voting members.
- f. We would like to see developers add to the fund to continue supporting the low-income communities.
- g. Question about the diversity of voices on this committee - Will there non-voting members, for example one from Google? Would there be possibility to have local community organizations to have non-voting members?
- h. This process must be open and transferable, so diversity is upfront.
- i. How long will it take to distribute the \$154 million into the Fund?
- j. What is the role of the external Fund administrator?
- k. What made the City decide to hand over decision-making to the community and are there concerns about implementation?
- l. Were there lessons learned from composition of the SAAG that could inform the committee selection?

APPENDIX - Live Poll Results

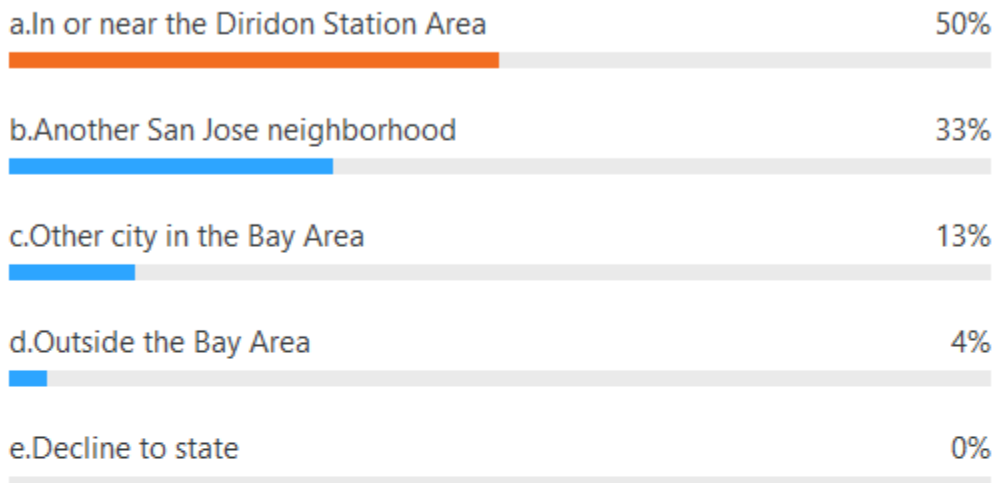
1. Before tonight, have you participated in previous Diridon Station Area engagement events in 2018-2020?



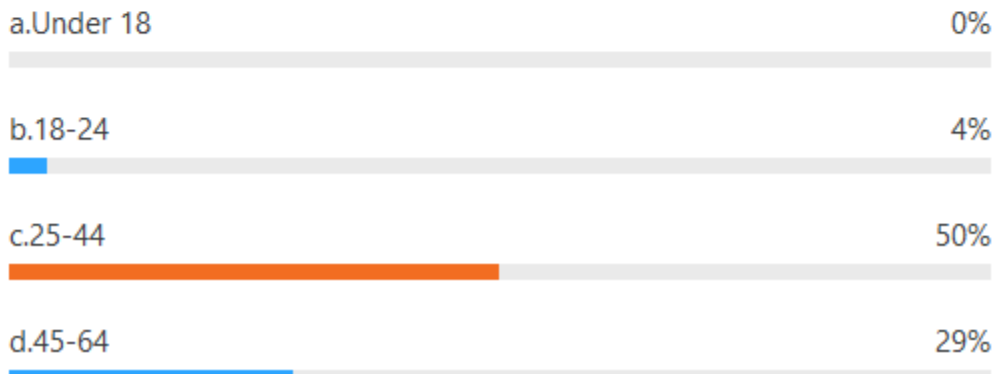
2. Which of the following topics are you most interested in?



1. 1.Where do you live?



2. 2.What is your age?



SJ DIRIDON | Website Comments

Downtown West Development Agreement

Comments Received as of 5.10.2021

I am concerned that the proportion of space allocated for non-office and non-residential space is too low, this includes other commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space. In the current plan there is more than 10x office space compared to all of these other uses combined.

In order to be part of the surrounding community, we need more space for these diverse uses. Google employees eat breakfast lunch and dinner in private cafes on their other campuses, and have bikes maintained by private mechanics, and massages by private masseuses. We need integration with the community as opposed to walls between employees and non-employees. We need opportunities for small businesses to exist and compete as opposed to food provided for free by giant contracted catering companies.

Have we explored opening access to these private cafes, or otherwise ensuring that employees are incentivised to use community cafes and services?

Hi,

"In the Draft document; it highlights the zoning allocated for housing including where affordable housing is located.

I would like to highlight that the affordable housing is not appropriately spread over the area at all (DSAP).

It all gets located into a small area by San Carlos / Bird with about 1700 units (constructed and planned to be) !

H6 + H5 + H1 (600units)

Delmas Park (123 units)

Park / McEnvoy (330 units)

777 park avenue (182 units)

MyEnvoy (365 units)

777 West San Carlos St (149 units)

750 West San Carlos (79 units)

There is pretty much no unit planned north of the area which are within the DSAP boundary (except few part of the "400 units" which are "still" mostly within the same San Carlos / Bird area).

Having proper mix of housing make sense and shouldn't be concentrated within the same area"

Great plan!! Let's get the Google project in San Jose started ASAP before Bay Area lose another high-profile company to another state (ex: Texas)!!

Can the google development FIX Stockton avenue as the gateway to the google village I.e. traffic calming , roundabouts, tree lined median to stop the speeding etc .

Very pleased with this plan, let's get it out in place!!

My family is concerned about the large concentration of social housing units (1000 from google, and additional ones from City) being planned and already in place in the area surrounding Diridon station. We feel it will present too much additional load on already poorly graded public schools in our area (Merrit Trace Elementary 4/10, Herbert Hoover Middle School 3/10, etc) which will motivate a family like ours to move out to areas with better public schools.

We are also concerned that the large concentration of social housing in one relatively small area would lead to the formation of NYC style housing projects with the associated crime, poverty, and economic deterioration since middle class families will gradually abandon the area due to safety and quality of life concerns.

I would like to see San Jose focus on improving its economics fundamentals by attracting employers to San Jose which will lift the entire area by providing jobs across all tiers and a strong tax base for the city. Instead it seems that San Jose is trying to make it difficult for companies to come here, creating multiple hurdles from well intended concerns. Lets stop doing that. We cannot feed and house the needy if we don't have money from the tax base..

As a long time SJ resident, I would to thank everyone for their effort and let's get this project done in no time.

Thanks for taking my comments. I am concerned that the land that is being dedicated to the city for affordable housing is only being zoned for mid-rise development. I am not sure how the city would be able to build to 300 dwelling units per acre on this land if it is zoned for mid-rise development. Please consider changing the planned development to allow high-rise develop on these blocks so that the maximum amount of affordable housing can be built.

Thanks and cheers,

Considering the areas that are set aside for affordable housing, and the discussion regarding Community Land Trusts, would it be possible to transfer the cost of the land (arguable the highest cost) to the City as City-owned land, and, instead, create a Community Building Trust?

Considering the Singapore-model of public housing, imagine that the land would be City-land. A mixed-use building on the lot, however, would be long-leased to a Community Trust with members consisting of unit-owners residing in the building. This would be a blend between traditional public housing, the Singapore-model of 99-year leases in public housing, community land trusts and traditional apartment building co-ops.

As the area is stepping closer to approval, the City should jump further ahead to the physical elements possible to prevent displacement, increase housing supply, and enable San Jose residents to generate wealth within the City.

Sincerely,
Nam Nguyen

Love Google Project! Let's move forward NOW! Time for action!

MENU OF RECOMMENDATIONS FOR THE UNALLOCATED COMMUNITY BENEFITS

\$7.5M_{UPFRONT}

THESE FUNDS ARE PRIMARILY FOCUSED ON QUICK ALLOCATION TO EXISTING PROGRAMS WITH KNOWN RESULTS

UP TO \$22.3M_{OVER TIME}

THESE FUNDS WILL COME INTO THE CITY AS OFFICE IS BUILT, WITH \$3.05 FOR EVERY SQUARE FOOT OF OFFICE COMPLETED

These funds are in addition to \$170M+ in other community benefits, including:

- \$154.8M for the Community Stabilization and Opportunity Pathways Fund, which would be governed by a Community Advisory Committee
- \$16.4M for affordable housing purposes

And \$253M to meet City requirements, including:

- \$87.6M of Commercial Linkage Fee for affordable housing production
- Approx. \$80.5M in Inclusionary Housing Fees and direct production of affordable units
- 4.8 Acres of City Parks and trails
- \$30M for local transportation improvements

\$7.5M_{UPFRONT}

IMMEDIATE COMMUNITY STABILIZATION AND OWNERSHIP **\$3.0M**

Prevent displacement of San Jose residents, including through supporting housing affordability, legal services for people facing eviction, tenant education and outreach, and other renter protection programs.

- This will in part support the first step of predevelopment and feasibility assessment of community ownership models like land trusts, in anticipation of future collaboration through the Fund and other City initiatives.

SCHOLARSHIPS FOR YOUTH AND ADULTS FOR JOB-TRAINING **\$3.25M**

Support opportunity pathways for underserved or at-risk youth and adults to access jobs and financial security, including through extended learning programs, career exploration opportunities, and training/retraining of San Jose residents.

- This will in part fund early childhood education and childcare services to support workforce participation.

NEIGHBORHOOD PROGRAMS TO ASSIST WITH RESILIENCE AND ECONOMIC RECOVERY **\$1.0M**

Invest early in programs at the Gardner Community Center to uplift individuals, support economic recovery, and build community among residents of the broader Diridon Station Area.

- Specifics to be determined based on neighborhood listening sessions.

STARTUP OF FUND **\$250K**

Initiate Community Stabilization and Opportunity Pathways Fund, including establishing Community Advisory Committee, selecting Fund Manager, and supporting the development of the first 5-year Strategic Plan.

- Includes associated public outreach and community engagement.

UP TO \$22.3M_{OVER TIME}

EDUCATIONAL OPPORTUNITY \$10.3M

Support underserved or at-risk youth and adults through K-12 programs, college scholarships, mentorship programs, and job training and placement programs.

- Includes college readiness program to make sure that students graduating from high school in San Jose can attend college and succeed in STEAM careers – with focus on first-generation, underserved minority, and female students.

COMMUNITY STABILIZATION \$7.5M

Prevent displacement of San Jose residents, with a focus on: 1) supporting San Jose residents' ability to access eviction protection services; 2) contributing to ongoing operations/expansion of community ownership models in San Jose; and 3) providing homeless outreach and services.

EARLY CHILDHOOD EDUCATION AND CHILD CARE \$2.5M

Increase options for affordable, accessible, and quality childcare for lower-income residents and workers in the Diridon Station Area and surrounding neighborhoods through:

- Funding for tenant improvements to build one or more childcare centers;
- Subsidy to childcare providers and/or families.

NEIGHBORHOOD PROGRAMS \$2M

Seed funds for programs aimed at economic resilience and community stability serving communities in the Diridon Station Area and surrounding neighborhoods.

(The intent is for the City to expend these dollars proportionally as the funds come in overtime, following completion of individual office buildings)

Appendix D

ELECTRIC MICROGRID FOR THE DOWNTOWN WEST PROJECT

The purpose of this attachment is to provide City Council with information regarding the initial legal, regulatory and economic feasibility and the potential benefits and risks of City provided electric service to the Downtown West Mixed-Use Project (“Development”). City provided electric service is one of three electric service options under consideration for the Development.

This memorandum also summarizes the other two options – current Investor Owned Utility (IOU) retail service or privately (Google) provided service – and describes the additional analysis and major work streams to be completed before any consequential decisions would need to be made by City Council regarding the City providing electric service to the Development. Likewise, Google, Inc. (“Developer”) is continuing to evaluate and explore the other two electric service options. City staff and the Developer will continue to collaborate and coordinate on these efforts.

ANALYSIS

A major component of the Development is a proposed “District Systems” approach to more efficiently handle at least some of the utility needs of the development. Where feasible, utilities such as electricity, thermal (heating and cooling), wastewater, recycled water, and solid waste flows would be delivered through district-wide infrastructure, rather than individual and building-specific systems.

Consistent with the District Systems approach, the Developer is proposing an advanced microgrid electrical distribution system to serve the development. The system would include electric distribution lines coming from a dedicated transmission substation to connect the majority of buildings and amenities within the development area in a microgrid. Renewable generation technologies including photovoltaic arrays and building-integrated photovoltaic products may be located on building rooftops and facades. In addition, storage technologies such as batteries may also be deployed within the substation area, central utilities plant, or buildings throughout the development. The microgrid would include controls to share power between buildings to provide limited operation in the event of an outage. Both storage and generation on-site would allow the realization of benefits such as:

- Provide power to key development area loads in the event of a utility wide grid outage;
- Increase renewable energy by allowing it to be shared between buildings; and
- Allow the generation and storage technologies to provide grid services and balance demand and onsite generation with grid import and export.

Options for Providing Electric Distribution Service to the Development

There are three options for providing microgrid electric service to the Development. As further described below, the options relate to whether the current Investor Owned Utility IOU, the City, or Google will be the ultimate owner/operator of the microgrid infrastructure after Google completes the required improvements. The Developer and City staff continue to collaborate on

the studies and analyses necessary for the implementation of a microgrid. The critical issue for both the developer and the City is that if a microgrid is implemented that it come online in sequence to support the development envisioned by developer.

1. *IOU Retail Service* – Like all other development projects in the City, taking retail service from the IOU is an available option. A comprehensive set of established regulations, tariffs, processes, and a franchise exist that would allow the developer to obtain electric service from the IOU to the project. It should be noted that the CPUC is implementing rules to facilitate the commercialization of microgrids pursuant to Senate Bill (SB) 1339.¹ As such, the developer is working to potentially take advantage of the Community Microgrid Enablement Program whereby the IOU would provide enhanced support for the development and implementation of high-priority multi-customer microgrids serving vulnerable customers and critical facilities. This type of arrangement may be an improvement over typical IOU retail service and remains an option.
2. *City Provided Electric Service* – In this option, the City would create a local public utility that operates the electric distribution system to provide electric service to the development. The utility would own all or part of the distribution system. Staff has analyzed the initial feasibility of this approach and believes that this is a viable and promising option. Local public electric utilities exist throughout California and have a proven track record of providing excellent, low-cost service to their customers. The driving force behind many of the benefits of a public utility is that a city council or local board governs and oversees the design, construction, operation, and rate setting of the electric system, meaning that the local community owns the utility and, therefore, controls the utility’s priorities through open meetings and transparent business decisions. A benefit of a city microgrid is that local public utilities must provide cost-based rates and do not pay taxes or collect a rate of return for investors, which provides cost savings for ratepayers.
3. *Developer Owned and Operated Microgrid* –The developer will engage with the CPUC to determine if the developer may own and operate the microgrid with modified CPUC regulation or oversight provisions that apply to microgrids. State law preempts the City from engaging in matters of the State, and therefore the City cannot exercise a regulatory role over a privately-owned microgrid. As a result, the City and developer have negotiated conditions of approval for the Vesting Tentative Map which will require the developer to demonstrate to the City that developer’s ownership and operation of the microgrid is consistent with all applicable federal and state regulatory requirements. The Vesting Tentative Map conditions of approval helps to ensure that appropriate structures, controls, and covenants are in place to effectively protect the public and customers. The developer would be required to make this demonstration prior to approval of a final map.

This includes the confirmation of specific measures for ‘continuity of service’ which will in the event of a failure of the microgrid business obligate the Office owners to step in and support the system's operation in perpetuity. This provision underpins the private operation of the system and ensures that the City will not be responsible for managing or mitigating for

¹ CPUC Rulemaking 19-09-009 (Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339).

a business failure. The ‘continuity of service’ provision is structured to ensure that residential and retailers are not impacted by a potential business failure and that support of the City will rest with the owners of the multi-billion dollar commercial assets. If the Developer owned and operated Microgrid is the selected option, the City will be paid an occupancy fee for the electric services crossing the street.

Regardless of the ultimate ownership of the microgrid system, the infrastructure will be constructed by Google as part of its overall project. To this end, the construction would be subject to the appropriate regulations that cover electrical grid construction. The constructed grid would be turned over to either the IOU or the City, as with all such public improvements in development, should one of those options be the solution. If Google retains ownership the system as a private utility, they would be subject to the conditions issued by the CPUC or other appropriate regulatory bodies.

Application for Interconnection to the Transmission System

Following City Council’s February 25, 2020 direction, staff worked directly with an expert electric transmission, distribution and energy systems consulting firm (Flynn Resource Consultants Inc.) and the Developer to prepare a wholesale transmission interconnection application for the purpose of the City providing electric distribution service to the Development. The interconnection application provided a variety of technical information about the proposed interconnection configuration and loads to be served. The application was submitted on April 30, 2020. The City is continuing to work through this process.

Confirmation of Legal and Regulatory Feasibility

In addition to preparing and submitting an interconnection application and initiating the various studies, staff also continued to evaluate the legal and regulatory feasibility of the City providing electric distribution service to the Development. The City Attorney’s Office utilized Duncan, Weinberg, Genzer and Pembroke, P.C. (DWGP), an outside law firm with extensive knowledge and experience in the energy and utility industry, to perform this evaluation.

The general scope of the evaluation was to review the legal and regulatory requirements, issues or potential impediments, and processes for establishing a public electric utility. Specific areas of analysis included existing franchise agreements; federal and state regulation, utility models; City policies, laws and regulations; funding; construction and acquisition of new assets; and interconnection to the transmission system.

Overall, the evaluation confirmed that the City has a clear legal and regulatory path to provide electric service to the Development. The following is a summary of the analysis and conclusions from the DWGP evaluation.

Federal and State Regulation

There are several federal and state regulators that oversee various aspects of providing electric utility service. In principle, each of these agencies is responsible for regulating certain aspects of the energy industry and electric system, but in practice there are cases where responsibilities

overlap or shift depending on the issue or characteristics of a specific utility. The electric service provided by the City may be regulated or require coordination with various agencies and entities including the Federal Energy Regulatory Commission (FERC), North American Electric Reliability Corporation (NERC), California Independent Systems Operator (CAISO), CPUC, and the California Energy Commission. As such, the evaluation identified several regulations, requirements and processes for which the City would or may need to comply, but these are standard for all municipal utilities. The preliminary legal analysis did not identify major issues or concerns within the federal and state regulatory framework that could preclude or even reasonably impede the City from providing electric service to the Development, but some issues may arise during the design or developing phase of the project.

Utility Models

There are several options legally available to the City for structuring and forming a public electric utility. Each are briefly described below.

City Utility Department – Under the authority of the California Constitution as a Charter City, City Council could establish a public utility within a City department – existing or new. City Council would then establish reporting requirements (e.g. through the City Manager or directly to City Council) for the utility and be responsible for legislative (e.g. rates), policy (e.g. retail service options), financing (e.g. funding operations and infrastructure), and oversight (e.g. reliability, security and risk) functions. Numerous California communities, including Los Angeles, San Francisco, Palo Alto, and Santa Clara provide electric distribution service through a city department.

Municipal Utility District (MUD) – State law establishes MUDs as a legal structure to provide electric distribution service within the territory boundaries of two or more public agencies. The formation process for a MUD may be initiated through a resolution from half or more of the public agencies involved or a petition by at least ten percent of eligible voters within the territory boundaries. Formation of a MUD requires an election and approval by voters in the area that the MUD will serve. A MUD is governed by a board comprised of five directors allocated among five wards of the MUD. Directors are elected at the time of a general election by the voters in the area being serviced by the MUD. The board hires and fires a general manager who is responsible for the operation of the utility and reports to the board. The board decides policy and is responsible for oversight of the MUD. The Sacramento Municipal Utilities District is an exemplary example of a California MUD.

Joint Powers Agency (JPA) – The California Joint Exercise of Powers Act creates a structure for two or more public agencies to enter into a joint powers agreement and jointly carry out common obligations. A JPA may only act within the authority of its member agencies, but no member can directly or solely control the actions of a JPA. JPAs are governed by a board of directors as specified in the joint powers agreement among the member agencies. The board hires and fires a general manager who is responsible for the operation of the utility and reports to the board. In the California energy sector, joint powers agencies engage in community choice aggregation (e.g. MCE, SVCE, etc.), development and operation of transmission assets (e.g. Transmission Agency of Northern California) and the development and purchase of generation resources for members (e.g. Southern California Public Power Agency, Northern California Power Agency,

and the newly formed California Community Power). Staff is not aware of any joint powers agency that provides retail electric distribution service in California.

Consumer Cooperative (CC) – a CC is a member-owned entity authorized by California statute. A CC is not a public agency but an entity that is democratically controlled by its members and not organized to make a profit. Members of a CC include those who receive the products and services provided by the CC. A CC is governed by a board of directors as designated in the articles of incorporation or bylaws established by the incorporators. The board hires and fires a general manager who is responsible for the operation of the utility and reports to the board. Electric distribution cooperatives that operate in California include Plumas-Sierra Rural Electric Cooperative, and Anza Electric Cooperative operates in the territory surrounded by Southern California Edison.

Additional information related to each of the options briefly described above is summarized in Table 1 below:

Table 1 - Public Utility Formation Options

Key Element	City Utility Department	Utility District	Joint Powers Agency	Cooperative Ownership
Voter approval required	No	Yes	No	No
Franchise required	No	No	No	Yes
Limited to City Boundaries	Yes	No	No	No
LAFCO Approval Required	No	Yes	Yes	Yes
Constitutional Borrowing Limits	Yes	No	No	No
Eminent Domain Powers	Yes	Yes	No	No

There are a variety of issues that City Council would need to consider when determining the structure that is the best fit for the City, including timelines for forming a utility, accountability to the customers of the utility, funding and efficiency of operations, and financing distribution infrastructure.

City Policies, Laws and Regulations

The legal analysis examined the City Charter and other City ordinances and policies to identify any changes that would need to be made to enable the City to provide electric service to the Development. ***The evaluation concluded that the City’s existing Charter and Municipal Code authorize the City to engage in electric utility operations, but some amendments may be required.***

Funding

The evaluation specifically looked at the process for issuing revenue bonds that would be paid back by utility revenues and it identified the required City Charter and voter approved amendments that may be needed to accomplish this.

Another approach for funding the installation and construction of facilities could be through an agreement with the Developer, whereby the Developer would fund and perform the installation and construction of the required utility facilities which may ease formation and result in lower costs to be recovered in electric rates.

Construction and Acquisition of New Assets

The evaluation looked to identify any legal issues related to constructing or acquiring new electric utility assets. The evaluation concluded that there are no major legal issues impeding the City in this regard, but some updates to the City Charter and Municipal Code may be prudent and several procedures and standards should be followed by the City to avoid legal risks.

Interconnection to the Transmission System

The evaluation included a legal feasibility analysis regarding the interconnection options for the City to transmission or distribution level service from the existing utility. The evaluation further described the procedures for establishing an interconnection, including the statutory framework, application process, system studies, and other considerations. Again, based on the information provided, the study identified a clear path for interconnection system to serve the Development.

Service Analysis and Economic Feasibility Study

Consistent with the direction provided by the City Council on February 25, 2020, staff worked with its consulting partner, Flynn Resource Consultants Inc., and the Developer to perform an electric service analysis to understand the economic feasibility of the City providing electric service to the Development. The study identified and analyzed the projected full costs for the City, based on the best available information, to establish and provide electric service to the project. These costs were then utilized as a basis for future cost-recovery over a 50-year time period. In summary, the study indicated an expected base case savings of approximately 20% for the City to provide electric utility service to the Development compared to current costs.

It is important to understand that there are several uncertainties that could impact the relative cost of City provided electric service, however, there are also many ways to mitigate against these risks, including pursuing a resolution of major potential risks before making a final commitment to undertake City electric service to the Development.

Financial Modeling: Economic Feasibility Analysis

The consultant developed a financial model to produce important financial information about the economic feasibility and performance of a City utility, including annual cost per kilowatt-hour of electricity to serve the City utility customers. To accomplish this, the model identified the

factors, or cost drivers, that would directly affect the cost of service and, ultimately, future customer rates. The model then allowed the consultant to input various assumptions for each cost driver depending on the best assumptions that could be made with available data and using their best engineering judgment. For example, the consultant performed an analysis to determine the estimated amount of energy that would be consumed annually by the customers once the project is fully built out. This analysis applied industry standard data on energy consumption amounts per square foot for different building types to the planned building square footage data provided by the Developer. The result of this analysis became the “base case” assumption for the annual energy consumption cost driver. However, knowing that there are several valid and practical reasons for which actual energy usage could be measurably less or more than the base case assumption, the consultant developed two “sensitivity case” assumptions for energy usage. Sensitivity cases of 75% of the base case and 110% of the base case were used, which resulted in higher and lower costs per kWh, respectively, to serve the project since some of the utility costs are fixed.

Once all of the cost driver data were defined and entered into the model, the consultant was able to determine an estimated annual cost per kilowatt-hour of electricity of a City utility under the base case scenario. The model also allowed the consultant to toggle between each base case assumption and the associated sensitivity case assumptions to understand the effect that each sensitivity case assumption would have on the cost per kilowatt-hour. Ultimately, this information was used to compare the estimated costs of service for a City utility against the cost of corresponding service from the existing utility to determine if, and under which scenarios, a City utility would offer an economic benefit to customers.

Main Cost Drivers

As described above, cost drivers are specific factors that directly affect the estimated cost of service for a City utility. The most consequential, or key cost drivers identified and used in the financial model are described below:

- Annual Customer Energy Usage at Buildout – The amount of energy consumed annually by end-use customers within the Development area, net of planned on-site generation.
- Departing Load Charges – Retail customers within areas currently served by an IOU are responsible for certain charges under the Transferred Municipal Departing Load (E-TMDL) tariff. These charges include wildfire fund charge, DWR power charge, nuclear decommissioning and, potentially, Power Cost Indifference Adjustment (PCIA).
- Infrastructure Capital Costs – The cost (including contingencies) of the City utility distribution facilities, City-owned customer substation, new IOU facilities required for interconnection to the transmission system and, potentially, network upgrades to the transmission system.
- Retail Rates – For comparison purposes, the analysis uses a forecast of current retail rates for each rate class expected to be served within the Development.
- Cost of Debt – The cost of debt financing for the infrastructure capital items.

- Staffing – Includes cost of salaries, benefits and other employee compensation for personnel to manage and operate the utility. Staff positions would include senior leadership, office administration, engineering, and field operations and maintenance.
- Generation Component Adjustment due to Diablo Canyon Retirement – Adjustments to generation rates are expected in 2026 when Diablo Canyon Power Plant is to be retired, which would directly impact the differential between City costs and current rates.

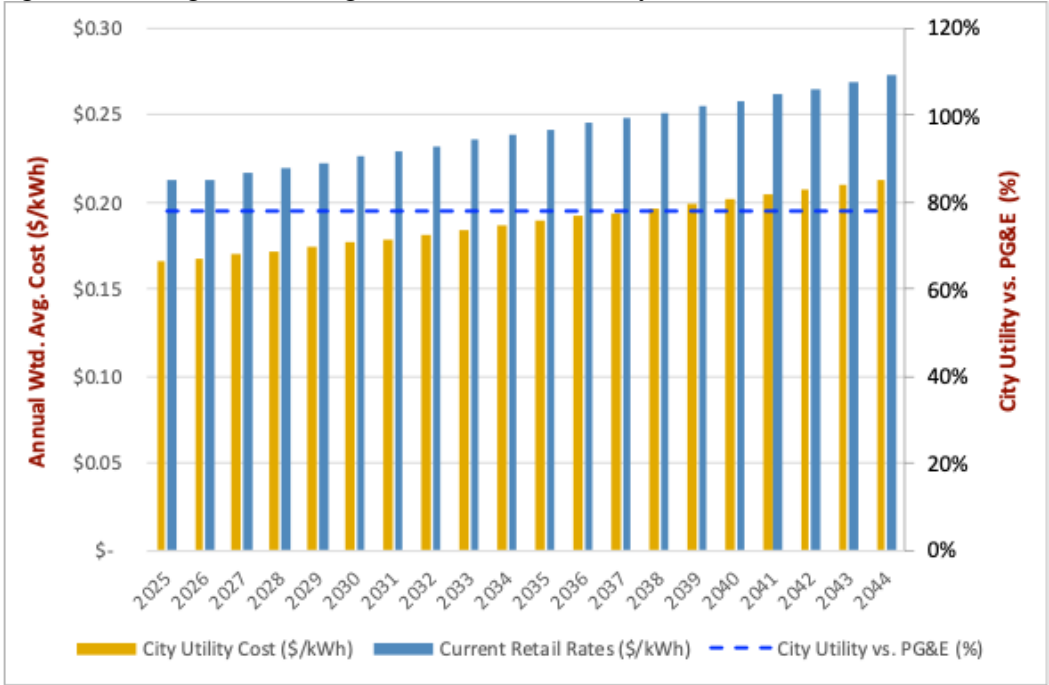
Base Case Assumptions and Sensitivity Case Assumptions

Base case assumptions represent the most likely estimate of the value for each cost driver using the best information available and solid engineering judgement. Sensitivity case assumptions represent reasonable upper and lower bounds scenarios, though not necessarily the most extreme scenarios. Table 2 below shows the base case and sensitivity case assumptions for the key cost drivers.

Preliminary Findings

The consultant’s analysis found that with base case assumptions, the net present value of the cost for the City to provide utility service to the Development over 50 years is approximately 80% of current costs, which equates to City costs being approximately 20% lower than the costs to of current retail service for a comparable 100% renewable and GHG-free product. Savings of this amount could be used to develop City electric rates that would be lower than current rates for providing 100% Renewable Portfolio Standard (RPS)/Green House Gas (GHG)-free power to the project. Figure 1 illustrates the comparison between possible City costs and current rates on an annual basis.

Figure 1 – Weighted Average Annual Possible City Costs Versus Current Rates



The projected savings between possible City costs and current retail rates is a weighted average over 50 years accounting for the present value of all costs associated with capital infrastructure, operations and maintenance, staffing, resource procurement and all other costs of operating a municipal utility, including a 5% contribution to the City in lieu of taxes and franchise fees.

As previously described in Table 2, there are sensitivity case assumptions for each key cost driver and, depending on which sensitivity case is applied in the model, the cost of service savings for City provided service increases or decreases compared to the base case scenario. Such increases or decreases would have a follow-on impact on the rates that would need to be charged to recover the costs. One of the most impactful cost drivers, for example, is whether PCIA charges will be applicable for City utility service to the Development. If they are, the savings for City utility service would decrease to approximately 11% (City costs approximately 89% of current rates). Another important cost driver would be if the actual energy consumed by the customers of the City utility were 110% of the amount estimated in the base case scenario, the overall savings would increase to approximately 25% (City costs at 75% of current rates). Conversely, should the actual energy consumption by the customers be 75% of the base case scenario, the overall savings would decrease to approximately 12% (City costs at 88% of current rates). This type of analysis allows the City and the Developer to understand which cost drivers and uncertainties are more impactful on the economic feasibility of City provided service.

While the City has been careful to use reasonable assumptions about the costs to build, own and operate the distribution utility, as well as reasonable assumptions about the costs of taking retail utility service from the IOU for a comparable 100% RPS/GHG-free product, if the base assumptions prove to be wrong in multiple areas with adverse outcomes and without corresponding favorable outcomes in other areas, the costs of City utility service could be higher than current costs. ***It is therefore important to resolve key uncertainties or to identify potential mitigating measures to address adverse outcomes for those uncertainties that cannot be resolved prior to forming a City utility and committing significant capital towards the project.***

The City and the Developer have identified the uncertainties and are actively working to resolve them or identify potential mitigation measures. The main cost drivers are described below.

- Departing Load Charges (PCIA Charges) – the Developer is pursuing resolving the uncertainty related to whether the end-use customers within the Development will be required to pay PCIA charges prior to the City making a commitment to providing City utility service to the Development.
- Infrastructure Capital Cost (Interconnection Facilities) – The City and Developer are working to better understand the costs of interconnecting to the existing transmission system.
- Infrastructure Capital Cost (Network Upgrades) – Upon completion of the interconnection system impact and facilities studies, the City will better understand the expected network upgrade costs and whether any would be allocated to the City.
- Annual Customer Energy Usage at Buildout – Lower than estimated project load levels over which to recover the utility costs would require higher City rates case scenario.

In summary, the analysis that includes the most accurate and reasonable base case assumptions clearly demonstrates that City provided utility service is economically feasible and could result in significantly reduced electric utility costs. With that said, there are still uncertainties that could change this outcome. Therefore, the City and the Developer will continue to refine cost assumptions and identify economic opportunities and risks associated with City provided utility service. Any necessary evaluation, mitigation measures, or other actions will be fully considered and appropriately presented to City Council.

Climate and Resiliency Benefits

One of the main benefits of the City owning and operating the electric distribution system is that the City and the Developer can better work together to advance our shared interest in building an advanced microgrid with on-site renewable generation and energy storage, thus making the energy service more resilient, clean, and affordable for the community. Having control over such a microgrid will position the City and the Developer to provide benefits to the City and the City's end-use customers that may not be realized without the City's involvement in the project. ***For example, the City and the Developer would be able to design the distribution system to provide power to critical loads during public safety power shutoff events.*** The City and the Developer would also continually look to deploy and maximize the benefit of new technologies and renewable energy systems, and closely coordinate on the installation of electric vehicle charging stations throughout the Development and on the development of electric vehicle charging rates that are tailored to adapt to changing electric market conditions and prices.

Agreement Framework with the Developer

The City and the Developer prepared language to be included in the Development Agreement that provides a framework to confirm the viability of the City to provide electric service to the Development, and then, subject to respective City and the Developer actions, approvals, and/or agreements, negotiate and enter into a business relationship with the Developer on the ownership and operation of the electric distribution system. Assuming the City determines it will take all necessary steps to establish a City utility, the business relationship would include terms related to the following:

- Microgrid design standards and process.
- Development and installation of the microgrid.
- Ownership, operation and maintenance of the microgrid.
- Alterations and/or reconfigurations of the microgrid.
- Energy Services, e.g. supply of energy to the project and establishment of rates.
- Customer relations, e.g. response to customer inquiries, adjudication of customer complaints, meter reading and billing.

Next Steps

Additional work by City staff, in close coordination with the Developer, over the next six to 12 months is required to fully evaluate, define and implement the legal, financial, design and engineering, and operational requirements related to the City providing electric service to the

Development. Below is a summary and estimated time frame for the major work plan items to continue with this process.

Phase 1

1. Interconnection Process and System Studies (Present – December 2021)

City staff and the Developer would continue to work to advance the City’s interconnection application and system studies, if determined to be the best course of action.

2. Legal and Regulatory Roadmap to Establish a Public Utility (June – December 2021)

Staff in the City Attorney’s Office would secure and work with outside counsel to fully define the federal, state and local/City legal and regulatory requirements, steps and timelines to form a utility and to provide electric service to the Development. This would be a “roadmap” study that considers all laws, regulations, and standards, and details the required or recommended filings, modifications, approvals, elections, agreements and other related actions.

3. Business Plan and Agreement(s) with the Developer (June – September 2021)

The business relationship between the City and the Developer for the City to establish a utility and provide electric service to the Development would be negotiated and defined following City approval of the Development. The business plan would better describe expected rates, tariffs, operations, and organizational structure as well as include a detailed analysis of the opportunities and risks including the economic, climate, and resiliency risks and benefits. It is expected that this item will be brought forward for City Council consideration in the Fall of 2021.

Phase II

4. Electric Distribution System Design and Engineering (September 2021 – 2022)

Following approval of the business plan and confirmation of economic, climate, and resiliency benefits; City staff would secure an expert consultant to coordinate with the Developer on the development of design standards and review engineering and design plans for construction of the electric distribution system.

5. Interconnection & Engineering and Construction Agreements (March 2022)

If City Council decides to establish a City utility and the City proceeds with its interconnection application, an Interconnection Agreement and other engineering and construction agreements for the required system improvements would be negotiated. Any necessary recommendations to City Council regarding these agreements would be brought forward to City Council at the appropriate time.

6. Formation of the City Utility (2022)

Following approval of the business plan and the legal and regulatory roadmap; the City would recommend to City Council the formation of a City Utility and obtain authorization for the required or recommended regulatory filings, approvals, elections, agreements and other related actions. Some of these actions may occur after the formation of the utility.

Phase III

7. Implementation and Operation of the City Utility (TBD)

Following formation of the City Utility, the City would recommend a series of operational steps and agreements to begin operations including approval of rates, tariffs, design standards, staffing plans, new classifications, operating and consulting agreements, and other items to commence operations.

Appendix E

City of San José's Responses to Sharks Sports & Entertainment's E-Mails and Letters to the City Concerning Its Rights Under the Arena Management Agreement

May 14, 2021

Sharks Sports & Entertainment (SSE) has written certain e-mails and letters to the City of San Jose (City) concerning its existing rights under the Arena Management Agreement. This document supplements the administrative record by providing additional details, responses and/or recommended actions to address those claims. Specifically, this document addresses SSE comments outlined in the following:

- Email and memo from Jim Goddard dated April 1, 2021 ("Requests for Modifications to Protect the SAP Center");
- Letter from LMA Law, LLP dated April 21, 2021 ("Summary of Key Provisions from AMA and related contracts bearing on issues related to Google Project"); and
- Letter from LMA Law, LLP dated April 27, 2021 ("SSE's Objection to Development Agreement").

SSE comments from the Summary of Key Provisions of the Arena Management Agreement dated August 15, 2018, as amended (AMA) are excerpted below in ***bold italics***, using their original numbering. Where responses also address specific items from SSE's Requests for Modifications, we have noted those items in brackets as *[Request for Modification # ___]*. Our response follows in normal text, bulleted. We have also highlighted in yellow recommended actions that would require some form of modification to pending entitlement documents.

1. ARENA LAND TITLE RIGHTS AND PERMITTED USES.

SSE Comments:

- A. *The above provisions would prohibit the City from taking any of the following actions, unless SSE consents in its sole and absolute discretion:***
 - *Issue a PD Permit with respect to Lots ABC, and/or record a certificate of such issuance (per SJMC 20.100.300)*
 - *Approve a tentative map that includes Lots ABC and/or record a final map*
 - *Record a Development Agreement against Lots ABC*
 - *Grant land or easements for a street or a utility corridor through Lots ABC*
 - *Encroach onto the Arena Land for improvements along W. Santa Clara Street or N. Autumn Street (Barack Obama Blvd.)*
 - *Create any other record encumbrance or burden on SSE's leasehold estate or title to the property*
- B. *SSE currently has the right to implement all uses permitted under the AMA without any planning approvals or permits. Therefore, unless modified to allow the continuation of such uses as permitted (rather than legal non-conforming), the proposed General Plan, DSAP and Zoning changes would be in direct conflict with SSE's express rights under the AMA.***
- C. *Under Google's General Development Plan (GDP), Google would have the right to establish a wide variety of uses with limited review by the City. The GDP should be amended to allow the City to impose conditions to protect the successful operation of the Arena, specifically to ensure that the new uses do not unreasonably disrupt or conflict with Arena events, including vehicular access and parking.***

- **City Response:**

- The AMA provisions cited by SSE reflect the City's obligations to allow SSE certain possession and management control rights over the Arena Facilities and Arena Land, including Lots ABC. The City acknowledges that redevelopment of Lots ABC cannot proceed during the term of the AMA absent a mutually-agreed parking agreement amendment to the AMA. *[Request for Modification #2]*
- The AMA does not preclude the City from exercising its general police power to enact amendments to the General Plan or zoning. Under §36.2 of the AMA, the City is obligated to have "good, marketable and insurable title to the Arena Facilities and Arena Land free and clear of any liens, encumbrances, security interests, liabilities, assessments, pending assessments, agreements, leases, judgments, claims, rights, easements, restrictions or other matters *that would affect Manager's [SSE] rights under this Agreement.*" General Plan and zoning ordinances cannot be considered "encumbrances" or "restrictions" on title under this provision, since it is not possible for the City to maintain title free and clear of General Plan and zoning provisions. Moreover, as noted above, nothing in the proposed project approvals would prevent SSE from undertaking activities the City is required to permit SSE to undertake under the AMA. *[Request for Modification #2]*
- While SSE's characterization of the City's obligations is in some respects inaccurate, the discrepancies are not relevant, as nothing in the proposed project approvals prevent the City from complying with its obligations under the AMA with respect to legal non-conforming uses. Nonetheless, the City proposes to address SSE's concerns by adding the following language to the PD Zoning Ordinance: *[Request for Modification #3]*

Existing Uses and Structures. The City Council does not intend to prohibit any uses and/or structures the City is obligated to allow on Lots ABC pursuant to the Arena Management Agreement by and between the City of San José and San José Arena Management, LLC, as amended through December 4, 2018 (the "AMA"). The uses the City is required to allow on such property under the AMA, which include parking and supporting entertainment uses, are consistent with the General Plan as amended through the effective date of this ordinance, including the applicable Downtown and Commercial Downtown land use designations. All uses and structures the City is required to allow on such property under the AMA, to the extent such uses or structures do not conform to the requirements of this ordinance, the applicable GDP and/or the applicable PD Permit, are deemed legal non-conforming uses or legal non-conforming structures. The ordinances applicable to legal nonconforming uses and legal nonconforming structures, which are in Chapter 20.150 of the Municipal Code, as that chapter may be amended, shall be applied to such legal nonconforming uses and structures in a manner that does not breach any obligation of the City under the AMA with respect to Lots ABC. §20.150.030 and §20.150.300 through 20.150.320 of the Municipal Code shall not be applicable to such property. Further, if requested by Sharks Sports & Entertainment, the Director of PBCE or designee, in consultation with the City Attorney, may reduce, adjust or waive any requirement that is necessary to enable the City to comply with its obligations under the AMA.

- Further, Google and the City have agreed to remove Lots ABC from the legal description of the area covered by the proposed Development Agreement between City and Google (DA) and instead Lots ABC would be a "Potentially Participating Parcel," meaning that the effectiveness of the DA would be deferred on Lots ABC until Google acquires title for Lots

ABC. [Request for Modification # 2; also responds to April 27 Objection to Development Agreement]

- While the City believes that none of its rights would have been impaired as originally written in the Development Agreement, these proposed changes fully address any concerns raised by SSE and ensure SSE's rights with respect to Lots ABC are fully protected.
- SSE's request that the proposed General Development Plan (GDP) be amended to allow the City to impose conditions to protect the successful operation of the Arena, and specifically to ensure that the new uses do not unreasonably disrupt or conflict with Arena events, including vehicular access and parking, is not necessary to ensure compliance with the AMA and is not required by the AMA provisions cited by SSE. City acknowledges it has the obligations in the AMA to not unreasonably interfere with SSE's ability to manage and operate the Arena, to make reasonable good faith efforts to make the Arena and adjacent areas under City control available for events, and, generally, not to interfere with SSE's rights under the AMA. The City has and will continue to make these efforts. The proposed GDP does not conflict with these AMA obligations. To the extent this request is intended to seek the City's consideration of how approval of the GDP itself might affect operations and costs related to the Arena, please see response to item 2 below. [Request for Modification #14]

2. CONSTRUCTION ON OR ADJACENT TO ARENA LAND

SSE Comments:

- A. The above provisions would prohibit the City from allowing construction of street or utility improvements on Lots ABC or any other part of the Arena Land, unless SSE consents in its sole and absolute discretion.***
- B. In addition, the City could not allow construction of improvements to the frontage areas along W. Santa Clara Street and N. Autumn Street, if SSE disapproves such improvements based on the criteria stated in §28.5.2(a).***
- C. The City may not unreasonably withhold consent for SSE to install improvements in the public right away along the street frontages related to crowd control, the protection of an unimpeded path of travel, homeland security, and so forth.***
- D. The Downtown West Design Standards and Guidelines (DWDSG) do not satisfy the requirements of §12.1.3(a) and therefore the City may not apply them to the Arena***

Facilities.

- E. The City should ensure that its policies and guidelines relating to construction mitigation plans for the Google Project (and other projects in the Diridon area) address the unique needs of the Arena with respect to event operations, and that costs and expenses related to construction mitigation are not imposed on SSE.***

- ***City Response: [Requests for Modification #8 and #9]***

- Even with reading the provisions generally discussed above in Response No. 1, the AMA does not give SSE veto power over a City general police power decision to allow or undertake development outside of the Arena Land, including development and activities within public rights of way. Likewise, there is nothing in the AMA that gives SSE an unfettered right to construct offsite facilities in rights of way or elsewhere, regardless of compliance with City land use regulations. Further, SSE's claims in these comments are inconsistent with the AMA parties' intent. As reflected in the "Side Letter Regarding Future Discussions" dated August 15, 2018, the parties contemplated "development of the Diridon Station Area," into a "master-planned transit-oriented community," which involves issues that are "complex, and the situation is constantly evolving." The focus of

the letter is not restriction of land use regulations or any constraints on surrounding development, but rather discussions regarding “access and parking needs of the SAP Center.”

- To the extent the citation to §28.5.2(a) is intended to refer to improvements outside of the Arena Facilities, the citation is misplaced as §28 addresses only “Capital Repairs and Replacements, Capital Enhancements and other Alterations *to the Arena Facilities*” (§ 28.1), and this limitation applies to the definition of “Capital Projects” in §28.1.1. To the extent the citation to §28.5.2 is intended to refer to improvements to Arena Facilities, please see the response to item 1 above.
- Because the proposed DWDSG (and the proposed project approvals as a whole) would not mandate redevelopment of Arena Land during the term of the AMA absent a mutually-agreed upon amendment to the AMA, they do not conflict with §12.1.3(a) in the manner alleged.

3. CITY’S PARKING OBLIGATIONS UNDER AMA

SSE Comments:

A. *The City failed to prepare an adequate parking analysis for the Google Project as a whole, as required by Section 21.1.1(b). Further, it appears that the City does not intend to do so for development proposals going forward. This is a breach of the AMA.*

• City Response:

- The requested analysis is provided in the Commercial Parking Evaluation, provided in Chapter 11 and Exhibit H to the Local Transportation Analysis (Appendix J2 of the Draft EIR), which addresses the project’s projected parking demand, demand management strategies, and the parking supply to be provided by the project, consistent with AMA §21.1.1(b), as well as mitigation strategies relating to neighborhood traffic and parking intrusion. This parking analysis meets the requirements of §21.1.1(b). See Response to Comment 3.2(C), below, regarding further parking analysis that will occur pursuant to Exhibit K of the Development Agreement and as stated in the Implementation Guide. *[Request for Modification #10]*
- It is premature to analyze spaces impacted or needed during construction, as no specific building design has been proposed at this time and the analysis will require site-specific, up-to-date information about effects on parking availability from construction of specific buildings. Construction parking plans will not deprive SSE of its contractual parking rights under the AMA. See Response to Comment 3.2(C), below, regarding further parking analysis that will occur pursuant to Exhibit K of the Development Agreement and as stated in the Implementation Guide. *[Request for Modification #12]*
- Additionally, the City is proposing a comprehensive Parking and Transportation Management District as part of its proposed DSAP amendments (separate from the Downtown West project) to provide coordinated strategies for parking and multimodal access within the Diridon Station area. As noted in the City’s Draft DSAP Amendments (October 2020), “These strategies are important to maintaining the parking spaces needed for the SAP Center per the City’s Arena Management Agreement, and include, but are not limited to, shared, priced and unbundled parking requirements.” *[Request for Modification #10]*
- To address concerns about impacts on parking during construction, the proposed requirements for Subsequent CIMP’s have been amended to require an assessment of parking impacted or needed during construction. In particular, the following requirement has been added to CIMP, §E: *[Request for Modification #12]*

- **Parking Space Assessment**

[In this section, we will identify the number of parking spaces needed during construction of the applicable phase. We will also describe other construction-related impacts to parking during construction of the applicable phase.]

B. The Conformance Review process eliminates the City's ability to comply with Section 21.1.1(a) with respect to development proposals going forward. Allowing SSE (along with other members of the public) to review development proposals within a 7 or 10 day window just prior to a public hearing is not what this Section intended; rather, the intent was to provide the project submittals to SSE when the City receives them, with sufficient time to make meaningful modifications to the project based on SSE's comments.

- **City Response:** *[Request for Modification #5]*

- The City acknowledges that it has obligations under AMA §21.1.1 to refer to SSE certain development proposals, including providing SSE with documents provided by an applicant as part of the project submittal and then to provide any timely received comments from SSE to the applicant and to consider such comments, all “to ensure that the required number of Available Parking Spaces is maintained.” There is no overarching meet and confer requirement unrelated to meeting parking obligations. Moreover, the City has met and conferred with respect to the proposed Google development, which the City acknowledges poses a “significant land use and development decision” within the meaning of §21.1.1.” The AMA does not obligate the City to refer subsequent applications for projects that have already been discussed with SSE to SSE.
- Nonetheless, the City intends to allow SSE and any interested party a substantial amount of time to comment and discuss subsequent applications with the City. This comment significantly understates the time available for SSE, and other interested parties, to review and provide feedback on Conformance Review submittals. The Conformance Review process is entirely consistent with the referral process described in §21.1.1(a).
 - First, the Conformance Review process for Vertical or sponsor-owned Open Space applications, as described in the proposed Implementation Guide, requires the City to make an application available on the Planning Division’s website at the time of application submittal, and an email notification will be sent to all subscribing individuals within 7 business days of the submittal. Because the application must be made publicly available at the time of submittal to the City, the City cannot provide any earlier opportunity for review.
 - Following submittal, Planning staff will then have 45 business days to determine whether the application is complete, potentially extended through a meet-and-confer process, and after a determination of completeness, the project sponsor must hold one community meeting 10-30 business days after a determination of completeness, with public notification. Further, the Director of PBCE’s Conformance Review hearing requires 72 hours advance notice, which cannot be issued before the community meeting.
 - Based on these timelines, from the time of application submittal to conformance review approval, assuming expeditious processing, this is likely to take 30-60 days, and could take longer.
- As outlined above, there is much more time than 7 to 10 days for this process to occur and the City expects that SSE will have ample time to review proposals, provide comments, and for the City to consider such comments prior to making any final determination(s). To

ensure that there is adequate time for this process, the City will promptly provide SSE with application materials upon receipt from Google.

C. The proposed Exhibit K to the Development Agreement (Exhibit K), as currently drafted, contains provisions that are inconsistent with the City's parking obligations under the AMA and/or may make it difficult for the City to satisfy such obligations. For example:

- i. The 4,800 commercial parking spaces for the Google Project is a maximum, rather than a minimum.**
- **City Response:** *[Request for Modification #10]*
 - The comment suggests that no minimum parking requirement exists. However, there is a minimum parking requirement as Exhibit K would impose a "Required Parking Ratio" at a cumulative ratio between 0.5 and 0.645 spaces for each 1,000 square feet of Floor Area, until the project has provided a total of 4,000 publicly-accessible parking spaces.
 - Exhibit K would recognize that the "Required Parking Ratio is critical to serve the needs of the Project, as well as to replace parking currently utilized by transit riders and SAP Center patrons."
 - Exhibit K further would require that at least 2,850 available parking spaces be maintained in aggregate within the project boundary and within one-third (1/3)-mile radius of the SAP Center, the same number of spaces that currently are available on Google-owned parcels within that 1/3-mile radius thereby requiring the minimum parking requirements as provided in the AMA.
- ii. Exhibit K fails to provide for any periodic assessment as to whether Google is meeting its goal that 85% of "publicly accessible" spaces will be "Available" for use by SAP Center customers, or for any consequences if Google fails to achieve such goal; thereby significantly increasing the risk that the City will fail to meet its Minimum Off-Site Parking Requirements under the AMA.**
- **City Response:**
 - As described in §20 of the AMA, the City (together with SSE) has certain obligations to monitor parking supply and utilization, and to take certain steps to maintain the Minimum Off-Site Parking Requirements. These obligations are not affected or diminished by the proposed Development Agreement, and the City would continue to monitor the availability of off-site parking spaces, including within Downtown West, through this existing monitoring process.
 - Additionally, Exhibit K would provide for confirmation of parking availability within Downtown West. §2.a states: "During the Conformance Review process, the Project will be required to confirm that at least 2,850 Available parking spaces will be maintained in aggregate within the Project boundary and within one-third (1/3)-mile radius of the SAP Center." Compliance with this requirement will be evaluated during the Conformance Review process for each office building, and verified prior to issuance of building permits for each office building.
- iii. The AMA limits Long Term Temporary Conditions to 3 years, whereas Exhibit K allows 5 years.**
- **City Response:** The City agrees that the Development Agreement should be aligned with AMA concepts regarding long term temporary conditions such that Exhibit K §2.b will be amended to read:

If the Project will result in a temporary failure to satisfy the Required Parking Ratio, as described in §2.a.i, for a single period that will exceed three (3) years, the City shall verify that its parking obligations pursuant to the Arena Management Agreement continue to

be met. If the City's obligations continue to be met, then the temporary failure of the project to satisfy the Required Parking Ratio may continue for another two (2) years, for a maximum of (5) years. After (5) years, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies as part of the Parking Delivery Plan during construction. If, however, it is determined after the initial 3-year period that the City will not meet its parking obligations under the Arena Management Agreement due to temporary failure of the project to satisfy the Required Parking Ratio, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies at that time.

iv. The AMA requires that Temporary Conditions be mitigated in accordance with a Temporary Parking Agreement entered into between the City and SSE, but Exhibit K does not provide for SSE's input into Google's proposed "interim parking management strategies."

- **City Response:** As AMA §19.3.2 provides, if it becomes necessary to utilize temporary facilities or measures to satisfy the Minimum Off-Site Parking Requirements due to Temporary Conditions, this would be subject to a separate written Temporary Parking Agreement approved by SSE and the City. Nothing in DA Exhibit K contradicts AMA §19.3.2 or diminishes SSE's role in securing a Temporary Parking Agreement with the City to the extent required by the AMA. Exhibit K, §2.b, would provide a parallel process for Google to work with the City in proposing solutions necessitated by Temporary Conditions, but it does not supplant, modify or otherwise impact SSE's existing rights under the AMA regarding Arena parking.

4. LOT E/MILLIGAN/DELMAS WEST PARKING OBLIGATIONS

SSE Comments:

A. It is clear that the City is not going to be able to fulfill its obligations under the above agreements and therefore will be in breach.

- **City Response:** As discussed with SSE, the City is in the process of undertaking environmental clearance activities for the Milligan surface parking lot and planned Lot E parking. Analyses associated with this work is underway and progressing. Some external factors – most notably, COVID-19 and its impact on staffing and funding, as well as initial findings regarding the historic structure on the Milligan site, have contributed to slower than anticipated progress. The City has discussed these projects, their progress, and schedule challenges with SSE, and will continue to work with SSE to deliver the Milligan and Lot E projects as quickly as possible. In keeping with the meet and confer process outlined in the AMA, the City intends to continue to collaborate with SSE and advance the planned parking as quickly as possible; in so doing, the City will not be in breach of contract. *[Request for Modification #11]*

B. The Google Project documents should be modified to provide that the Delmas West development will not proceed unless and until the conditions set forth in the First Amendment to the AMA are satisfied.

- **City Response:** *[Request for Modification #11]*
 - The AMA does not require that project entitlements reflect the restrictions on Delmas West. The First Amendment to the AMA provides that a condition precedent to SSE's agreement to allow Google to locate Replacement Parking on Delmas West is that the Lot D Lease include a covenant that Google keep Delmas West open as parking until certain conditions are met. The Lot D Lease now includes the required language. This both satisfies the First Amendment to the AMA and it adequately protects SSE's rights.

- C. ***For purposes of consistency, and to help ensure that the City does not breach the relevant agreements, the provisions of Exhibit K to the Development Agreement regarding an Alternative Parking Arrangement on Lot E should incorporate the relevant provisions of the above agreements, including:***
- i. ***The obligation to provide priority parking for Arena guests***
 - ii. ***Management of the parking facility by SSE***
 - iii. ***SSE's option to purchase the Lot E parcels***
- **City Response:** While nothing in Exhibit K to the Development Agreement can be read to abrogate any of the rights SSE has regarding Lot E, as a show of good faith, the City and Google have agreed to amend Exhibit K so that it explicitly acknowledges SSE's rights by adding the following language: *[Request for Modification #11]*
 - ***In the event the Alternative Parking Arrangement results in designation by the City of "Lot E" for the development of additional parking by Developer, subject to any necessary environmental clearance, nothing in this Exhibit shall preclude the City from complying with its obligations under the Arena Management Plan with respect to Lot E, including regarding parking priority being provided for SAP Center event-related parking at least until June 30, 2025, which entity would manage the parking, and/or any option agreements to purchase that property.***
- D. ***The proposed zoning for the Lot E and Milligan sites should be changed from Downtown Primary Commercial to Public/Quasi-Public allow for the construction of stand-alone public parking facilities, so as to maximize potential parking capacity and ingress/egress functionality for event purposes.***
- **City Response:** The City intends to fully comply with its commitments regarding Lot E and Milligan. Those commitments do not require the Public/Quasi-Public designation for those sites. In fact, the only site in the DSAP with that designation is Diridon Station itself. The DSAP specifically calls for parking on the sites, which is all that is needed. The AMA does not require that parking be the only use at those sites. Further, when the City is considering any development project covered by AMA §21.1.1, it will meet and confer with SSE regarding parking, but nothing further is required at this time. *[Request for Modification #16]*

5. CHANGES TO STREET NETWORK

SSE Comments:

- A. ***Consistent with the above goal of achieving the best street and intersection function for the benefit of both the Arena and the Google Project, the street network configuration proposed by SSE should be adopted instead of the street network configuration proposed by Google. This would help ensure that the streets will preserve the existing functional capacity as intended under the AMA (even though such capacity will still be grossly inadequate to accommodate the enormous increase in traffic volume generated by the Google Project).***
- **City Response:** *[Request for Modification #4]*
 - The AMA does not require that streets be maintained to preserve their existing functional capacity. The provision of the AMA referenced by SSE (§21.2.3) requires the City and SSE to work together to achieve "the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area". To that end, the City has coordinated extensively with SSE regarding the proposed streets and intersection network for the Diridon Area. In the process of considering changes to the street network, the City and Google have sought to balance the needs of future development, including the project, and the Arena operations. This has been done through extensive and frequent meetings over the last several years and has been documented in

technical studies, including the site-wide Focused LTA and more recently ingress and egress analysis by Fehr & Peers. This has been undertaken in good faith and with the goal of benefiting both the Arena and other development, including Downtown West. While SSE may not agree with the analysis or with the proposed changes, SSE approval is not required even though mutual agreement is always the goal. This coordination and analysis is detailed in the City's response to Request for Modification #4 below.

- The City has been responsive to SSE's input by compromising, making adjustments, and general cooperation in solving the issues raised and advice given by SSE since at least early 2019 and continuing through the responses in this letter including adjustments to numerous elements of the circulation and parking by the City and/or Applicant, including:
 - As part of the Amended Diridon Station Area Plan, maintaining highway access from NB 87 to Santa Clara Street, proposing improvements to highway access at 87/Julian, and including a direct Autumn Parkway extension from Julian to St. John Street.
 - Increasing the width of Barack Obama Boulevard between Santa Clara and San Fernando Streets; originally, this stretch of Barack Obama Boulevard was proposed as a two-lane roadway with flexible curb use; the City and Downtown West project have increased the curb lane to be a fully drivable space (12', including gutter space).
 - Increasing parking figures (up to 4,800 parking spaces) proposed in the Downtown West project, with a minimum of 4,000 parking spaces required at full build out and a requirement that – at any given time during Downtown West construction – at least 2,850 parking spaces remain available to SAP Center patrons.
 - Incorporating a full entrance to and at least partial exit from the Delmas parking lot at Santa Clara Street, as detailed in the following response.
 - In line with requests from the Wenck memo, the City and project will restripe Delmas between San Fernando and Park to two southbound lanes and maintain travel lanes along Julian Street.
 - Further, analysis by Fehr & Peers on behalf of the City confirms that Arena ingress/egress will continue to function. See the response to Request for Modification #4 below for further detail. While SSE may not concur with the F&P conclusions, the AMA does not give SSE any approval rights.

B. *The Google Project documents should be revised to make it clear that in lieu of keeping Delmas Street open between Santa Clara and San Fernando Streets, Google will be required to provide a driveway to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.*

- **City Response:** [Request for Modification #6]
 - The Delmas Development will include a driveway from Santa Clara Street directly to the underground parking. This change was made to the project in response to SSE's request. While the project is not showing the driveway visually because the precise location of the driveway depends on the design, the Santa Clara driveway is addressed in the proposed Downtown West Design Standards and Guidelines (DWDSG) in Standard 6.17.3 - Parking and Loading Access in Open Space. This Standard reads "Access to below-grade parking shall be permitted on project sponsor-owned open space and the Social Heart City-dedicated open space in accordance with the Parkland Agreement. ..." DWDSG Figure 6.54, Prohibited Curb Cut Locations, also inherently permits a driveway at this location because it is not a protected edge.
 - However, to the extent the DWDSG was unclear on this point, **Standard S6.17.7 has been revised to clarify that "full vehicular ingress and, at a minimum, partial vehicular egress shall be provided between West Santa Clara Street and the below grade parking garage**

under block E1...” This is also seen on Figure 6.54 as a preferred curb cut location, rather than not identified (which was the case in previous drafts), or prohibited.

- Further, the project applicant developed a Delmas Avenue Memo to provide supplemental information to the Local Transportation Analysis (LTA), evaluating the operations of Autumn Parkway with the removal of Delmas under future conditions with the full buildout of the project. Please see the City’s Downtown West webpage for the full memo (“Supplemental Analysis for the Downtown West Mixed-Use Project,” April 16, 2021). The analysis concludes operations and intersection queuing along Autumn Parkway would operate within acceptable range and that the segment of Delmas Avenue between Santa Clara Street and San Fernando Street could be vacated to through traffic. This confirms that closing Delmas does not impair the overall function of the streets in the area.
- C. ***In order to help preserve the City’s ability to perform its obligations under the AMA as set forth above, the Google Project documents (including the Conformance Review Implementation Guide) should be revised as follows:***
 - i. ***Plans for any proposed changes to streets important for ingress/egress to the Arena must be provided to SSE for comment prior to preparation of the LTAs described below***
 - ii. ***In addition to all other topics required by the City’s Transportation Analysis Handbook, the scope of LTAs for future development proposals must include LOS/capacity analysis of the affected intersections during the 6 to 7 pm peak arrival hour for SAP Center events.***
 - iii. ***Draft LTAs for future development proposals must be provided to SSE well ahead of public circulation, to give SSE an opportunity for meaningful input***
- **City Response:** *Request for Modification #5*
 - As Downtown West is implemented, the Project Applicant will conduct additional Focused LTAs in alignment with the scoping and timing as outlined in the Implementation Guide. For the general public, focused LTAs will be posted to the City’s website and will be reviewed by the Director of PBCE and/or the Director of Public Works as part of the conformance review process. In addition, as an added effort to coordinate with SSE, the City will inform SSE when such Focused LTAs are submitted by the applicant and provide copies to allow SSE ample time to review. Further, in accordance with the AMA, the City will meet with SSE in advance of any work on the relevant streets.
 - The obligation under the AMA is for the City to coordinate with SSE on changes to streets. The City will meet this obligation as proposed changes to streets that may impact Arena ingress and egress come forward, but this obligation does not give SSE a right to participate in every step of the development process, such as by reviewing changes proposed by an applicant prior to preparation of the Focused LTAs. The applicant will follow the process set forth in the Implementation Guide, and the City will promptly provide SSE notice of submitted documents, such proposed changes to streets and Focused LTAs, and will meet with SSE to work together in good faith. In that way, the City will seek and obtain SSE’s input as part of the ongoing coordination effort.
 - Both the site-wide Focused LTAs and future Focused LTAs analyze daily conditions including pm peak hours which are defined as 5-6pm as scoped in coordination with San Jose Department of Transportation (DOT) and in alignment with the City’s Transportation Handbook. The Project applicant has undertaken additional supplemental and voluntary analysis to understand project impacts to SAP Center ingress and analyze a 6:30-7:30pm timeframe as previously requested by SSE.
 - **If any changes to the Project’s proposed road network are proposed that would potentially change the findings of the completed ingress analysis**

<https://www.sanjoseca.gov/home/showdocument?id=72951>), the City and Google will require future Focused LTAs to analyze ingress for potential impacts to SSE Operations, as requested in this document. This change is documented in the Implementation Guide.

6. TRAFFIC AND PARKING MANAGEMENT PLAN (TPMP)

SSE Comments:

A. *The proposed use of dynamic lanes and planned reliance on major revisions to the TPMP to manage event traffic is not consistent with either the express provisions or the intent of the Arena TPMP.*

• City Response:

- The results of the Focused LTA of the project's internal roadway show that for day-to-day operations, a three lane facility (one lane in each direction, plus one dynamic lane) is sufficient. Roadway systems are typically designed for "normal daily" use and the City will work with SSE to determine future traffic control measures, including potential use of a dynamic lane on Barack Obama Blvd for added through capacity, manual traffic control of intersections, and turn restrictions, to facilitate efficient access for SAP Center event traffic.
- The project does not rely on major revisions to the TPMP to manage event traffic. The DSAP area is undergoing significant transformation, not just by the Downtown West Project, but with DISC, the extension of BART, high speed rail, Caltrain electrification, and other development. As such, revisions to the TPMP are not only planned but will be necessary as these various projects are constructed and come online. Indeed, as noted above, the AMA and TPMP contemplate that the TPMP will be updated every three years. Subdivision (a) of § 23.1.3 of AMA states: "The Arena TPMP is intended to be a working document and contains both the ability and requirement to adjust to changing conditions, and to improve as the parties may agree, provided that no such changes shall operate to limit or reduce the scope and purpose of the Arena TPMP."

B. *The approvals for the Google Project should be conditioned upon Google's obligation to fund any incremental traffic operation expenses incurred by SSE or the City as a result of revisions to the street network arising from the Google Project – such funding should not come from surcharges on parking passes purchased by SAP Center customers (see discussion below in §7).*

• City Response: [Request for Modification #7]

- Google is required to provide substantial parking allowing for public access and SAP events as part of its development.
- Today, SSE pays for the full cost of the Transportation and Parking Management Plan (TPMP). The TPMP is expected to change, as construction and new projects (BART, Downtown West, and other developments) materially change access needs and opportunities. It is not appropriate for one party (Downtown West or another single project) to bear the responsibility for any increased cost. However, it is also not appropriate to ask SSE to bear the increased burden.
- The City has suggested moving to a more equitable system for paying for TPMP. There are a variety of options to account for the cost of this program. The City looks forward to determining the best approach with SSE and other stakeholders.
- In the Event Egress and Ingress analysis performed to date by Fehr & Peers and others, while TPMP needs may increase, the full value and appropriate amount of that additional TPMP remains to be determined.

7. DISTRICT PARKING FEES.

SSE Comments:

- A. Any District parking designed to provide parking for Arena events should not impose surcharges on top of market rate parking fees. This would amount to a “New Tax” payable by SSE’s guests.**
- B. The intent of the above provisions was to ensure that SSE and/or its guests would not bear the financial burden of development in the Diridon Station area by others, as that would essentially amount to an unfair subsidy.**
- **City Response:**
 - The City is aware that under the AMA the City is not allowed to impose a new tax payable by SSE’s guests (and/or others in the Diridon Area). Today, SSE pays the full cost of the Transportation Parking and Management Program (TPMP). The City agrees that the anticipated increased (incremental) cost of TPMP should not be borne by SSE. The City is exploring different funding options. One option under consideration is a small tax on top of market rate parking fees as one way in which to sustainably fund a robust Transportation Parking and Management (TPMP) and/or Transportation Demand Management Program. This could relieve the cost burden of TPMP currently borne by SSE and ensure that the full range of people who drive and park to events pay for the cost to manage the associated traffic (not just those who park at sites managed by SSE). Again, the City would not pursue with or without SSE’s partnership and an amendment to the AMA.

8. COMPETING FACILITIES.

SSE Comments:

- A. The event/conference center (and auditorium) uses allowed as part of the Google project should be limited to uses that are adjunct to the project sponsor’s corporate business, so that any such new facility will not compete with the Arena.**
- **City Response: [Request for Modification #13]**
 - The Project does not propose to inhibit the variety of events or activities at the Arena. The City does not propose to “...finance, financially support or participate in the construction of...” “...an arena, amphitheater or comparable facility with over 5,000 seats, used for events typically held in comparable major arenas.” Rather, Google is the project sponsor and the City’s participation is that of a regulatory agency granting zoning and planning approval, making §4.2 of the AMA inapplicable.
 - As defined in the GDP, an “event/conference center” is “a facility owned, leased, or made available by a business entity for the purpose of events organized or funded by the business entity, including but not limited to product launches/announcements, corporate meetings, conferences, seminars, small conventions, and screenings.” (GDP Sheet 4.01, emphasis added.) The Project “event/conference centers,” which would have a maximum aggregate capacity of up to 2,000 attendees, are not within the range of types of events SSE manages and is far short of the 5,000 seat capacity required to be considered a “Competing Facility” under the AMA. This is further evidence that the parties to the AMA never intended to restrict facilities such as the Project’s “event/conference center”.
 - Finally, §4.2 of the AMA does not prohibit competition or require limitation on uses of facilities as described and envisioned in the project.

9. SPECIAL EVENTS.

SSE Comments:

- A. Under the Google Project's GDP, Special Events (of up to 45 consecutive days or recurring weekly or monthly for a longer period) and Limited Term Uses (longer than 45 consecutive days) may be scheduled on Private Property with no coordination with OCA or permits from the City (except for fire department or noise permits). For example, such events could occur within the large triangular area between Parcel E1 and W. Santa Clara Street, a block away from SAP Center at the entrance to a proposed shared parking facility. Per Exhibit F3 to the Development Agreement, this space may be privately reserved for up to 127 days per year, from Sunrise to 9:00 PM. This could cause major conflicts for Arena events, in terms of both traffic congestion and available parking.**
- i. In keeping with the intent of the above provisions, the Google approval procedures for Special Events and Limited Term Uses should include referral to SSE and OCA for schedule coordination to avoid conflicts with major events at SAP Center.**
- B. Rights granted for the Google Project should be subject to other applicable existing City and County ordinances. For example, food peddlers should be required to obtain County health permits and should be prohibited from peddling within 500 feet of the Arena on event days as provided by the City's peddler ordinance.**
- **City Response: [Request for Modification #15]**
 - The City has been engaged in communications with SSE regarding this Project and therefore has complied with its obligations under the AMA. The AMA imposes no obligations respecting operations of private third parties' implementation and operation of their projects, so there is no obligation for third parties to coordinate schedules for major events outside of the Arena and the Arena Green which take place on property not owned by the City. Moreover, the proposed project approvals would not exempt the project from regulations pertaining to food peddlers.
 - The proposed GDP also states that certain Special Events or Limited-Term Uses that require a fire permit or noise permit must notify the Police Department and Department of Transportation to provide applicable City departments with relevant information regarding large Special Events or Limited-Term Uses to ensure appropriate coordination with other large events in the City to ensure the public safety of event participants, users of City streets, and adjacent property owners.

**City of San Jose's Responses to Sharks Sports & Entertainment's Letter Dated April 2, 2021 Concerning
Requests for Modifications to the Downtown West Project
May 14, 2021**

SSE requests that the City and Google make the following modifications to the draft land use entitlements applications proposed by Google for the Downtown West Mixed Use Plan, in order to ensure the City-owned arena is properly protected and that the primary objective of the current Diridon Station Area Plan, adopted in 2014, is fulfilled:

- ***Ensure the continued vitality of the San José Arena, recognizing that the San José Arena is a major anchor for both Downtown San José and the Diridon Station area, and that sufficient parking and efficient access for San José Arena customers, consistent with the provisions of the Arena Management Agreement, are critical for the San José Arena's on-going success.***
- ***At a minimum, the City and Google are required to ensure that the proposed land use entitlements are consistent with SSE's rights under the Arena Management Agreement. In many instances, the land use entitlement documents directly conflict with the AMA, and require modification in order to conform.***

Request #1: Expressly incorporate the current DSAP objective to protect the arena in each of the project approvals requested by Google, and require each future development within the mixed-use plan to fulfill this obligation prior to receiving final city approval.

Comment: Both Google and the City have assured SSE that the Downtown West project will benefit the arena and that future development of the project will not impact the facility's operations or the safety of its patrons, consistent with the DSAP arena objective above. However, this objective is not included anywhere in the goals of the project, nor is it incorporated into any of the specific application documents. This objective must be embedded in the project approvals to ensure the requirement will be achieved. The land use approvals Google seeks are unprecedented in terms of the breadth of flexibility provided and lack of discretionary review the City will retain going forward. However, the applications remain completely silent about the future operations of the arena. Unless specific language to protect the arena is included now, the City may not be able to prevent future developments that will likely imperil the operations of SAP Center.

City Response:

The City and Google recognize the value of the SAP Center as an anchor for both Downtown San José and the Diridon Station area. The successful partnership has spanned many years and will continue into the future.

The Diridon Station Area Plan aims to “ensure the continued vitality of the SAP Center, recognizing that it is a major anchor for both Downtown San Jose and the Diridon Station area, and pursue best efforts to maintain a sufficient supply of parking and efficient vehicular and pedestrian access for SAP Center customers, compliant with the standards set forth in the Arena Management Agreement.” The Plan also contains policies designed to provide sufficient parking for SAP Center customers and create a shared parking district for private development, transit users, and visitors, including especially the patrons of

events at the SAP Center (Amended DSAP, p. 153). The DSAP also describes the City's AMA obligations for parking and the way in which the parking management strategies contained in the DSAP are designed to meet those obligations, including plans for the parking structure just north of the Arena.

Under the buildout of the Downtown West program, SSE patrons will have access to more parking than what currently exists. At the City's requirement, Google will construct at least 4,000 spaces at full buildout, and also ensure that at least 2,850 parking spaces remain available for SSE patrons throughout the duration of project construction (see draft DA, Exhibit K). These spaces have been planned with event egress and ingress in mind.

The Project's Downtown West Design Standards and Guidelines (DWDSG) speaks to a transportation network and streets that were designed with the SAP Center's needs in mind. For example, §6.10, Street Specific Design Intent includes language regarding how Cahill Street, South Montgomery (Meander), and West Santa Clara Streets were designed to support and offer event access to SAP Center. And in particular, Barack Obama Boulevard was designed to provide additional capacity for SAP Center ingress and egress.

Also in the DWDSG (56.8.3.), "Private streets shall be permitted to be closed as needed by the project sponsor for special events and security in the locations identified in Figure 6.19, provided proper notification is provided and **SAP Center event access is maintained as needed.**" Downtown West has made special accommodations to ensure that these objectives are met. However, this objective does not explicitly state that the goal is to "protect" the Arena. Further Downtown West is only a portion of the DSAP area. With that, Downtown West cannot carry out the entirety of the DSAP objectives, but rather is responsible for its portion and has made these special accommodations to that end.

Several of the Project's objectives, referenced in the Project Description of the EIR, speak to encouraging the vitality of Downtown San Jose and ensuring sufficient access and connectivity. Some of the relevant project objectives include:

- Incorporate high-quality urban design, architecture, and open spaces with varied form, scale, and design character to enliven San Jose's downtown.
- Build upon the project's location at the convergence of a significant regional and statewide transportation hub and the city's Downtown to create a world-class, architecturally iconic civic/cultural center for the City of San Jose, particularly through the combination and juxtaposition of historic and contemporary design elements.
- Improve pedestrian, bicycle, and transit connectivity within the project area, as well as between the project area and existing adjacent neighborhoods, in order to create a highly active and lively pedestrian and bicycle-friendly environment.
- Consistent with the MOU, develop a project with minimal parking, while adhering to AMA parking requirements, and robust Transportation Demand Management measures in order to encourage active transportation and public transit use, and to support implementation of the City's Climate Smart plan.

Request # 2: Maintain the current General Plan and Zoning District designations on the arena parking lots as "Public/Quasi Public" and maintain the current parcel lines for the arena land (including the

adjacent parking lots) without new mapping; remove these parcels from the Downtown West project entitlement approval documents.

Comment: Neither the City nor Google has made a formal request for SSE to consent to the transfer of the arena parking lots (Lots A, B and C) for inclusion in the project, nor have the issues SSE identified more than two years ago to support potential transfer been addressed in any material way. In order for the arena to remain a thriving part of the downtown and continue to serve as a long-term home for the Sharks, arena parking lots should not be included in the Google project until their development is reasonably foreseeable.

More important, the City is precluded under the Arena Management Agreement from creating new burdens on title to the property leased by SSE under the agreement, including the arena parking lots A, B and C. Rezoning of these specific parking lots adjacent to the arena as part of the Google project and approving the PD Permit and Tentative Map with these parcels included will create a burden on title to the arena property and so cannot be undertaken by the applicant or the City without SSE's consent. Google has already excluded properties owned by Caltrain and the VTA, and so can easily accomplish this modification.

City Response:

The City and Google share the desire for the Arena and SSE to remain a thriving part of the downtown and Diridon Station Area, and to continue to serve as a long-term home for the Sharks. Moreover, the City and Google recognize that, for the duration of the existing AMA, SSE would need to consent to an amendment to the AMA before transfer of the Arena parking lots ABC or development of that land could occur under the term of the AMA and that, to date, SSE has not been willing to provide such consent.

That said, a number of items in this request require clarification.

First, the City and Google agree that SSE has rights to operate parking on Lots ABC and are making changes to project documents to affirm and clarify these rights [AMA Key Provision #1]. As further articulated in AMA Key Provision #1, the Downtown West project would not create a burden on title affecting SSE's rights.

Second, the parcel owned by VTA is included in the project entitlement approval documents, including the PD Zoning District; however, this parcel as currently contemplated will continue to be owned and developed by VTA pursuant to the GDP standards and any subsequent planned development permit for the VTA parcel. Caltrain-owned parcels were removed during the formal submission process, and thus were excluded from the analysis for entitlements and/or from the infrastructure and community benefits.

Finally, SSE requests that the City and Applicant remove Lots ABC from the proposed Project. As articulated in AMA Key Provision #1, the City and Applicant have adjusted project documents to clarify that timing of the development program and benefits would not occur until the transfer of Lots ABC to Google. This maintains the ability to create approximately 1,000 homes and 665,000 square feet of office (estimated 2,660 jobs) on Lots ABC, as well as the associated infrastructure improvements and community benefits, upon either an amendment of the AMA or its expiration.

Importantly, the Option/Negotiation Rights Agreement allows the City, Google, and SSE to continue to collaborate on mutually beneficial solutions for Lots ABC in the coming years.

Request # 3: Clarify that, even if and when SSE approves of changes to the zoning for arena parking lots A, B and C, the interim use of that property shall remain an existing permitted use pursuant to current zoning district designation without a requirement to obtain a Downtown West Use Certificate or Use Permit or any other conditions of approval. Further, clarify existing non-conforming uses to expressly state that these arena parking lots will remain a conforming use rather than become legal non-conforming one as provided for in the applications.

Comment: The City has obligations to its residents (who approved and paid for the arena), to not shorten or diminish the usefulness of the arena facilities, and has made similar agreements with SSE in the AMA. The A, B and C parking lots are integral to the success of the SAP Center and must remain permanent, at least so long as the current AMA remains in place, especially with the elimination of adequate parking supply in the area. Changing the allowed uses on these lots prior to imminent development, and making existing permitted uses legally non-compliant, will limit the arena operator's ability to maximize the economic use of the facilities as currently allowed by the AMA.

City Response:

It is the City full intention to continue the current use of parking Lots ABC until such time as the site is scheduled for development. Please refer to response to *AMA Key Provision #1*.

To be clear, the City does not agree with the claim that there's an "elimination of adequate parking supply in the area." There is no evidence of the elimination of adequate parking in the area; to the contrary, the proposed General Development Plan calls for a minimum of 2,850 commercial, publicly-accessible parking spaces to be provided within the Downtown West Planned Development Zoning District and – per Exhibit K of the Development Agreement – a total of at least 4,000 publicly-accessible parking spaces at full buildout of the proposed commercial space. A minimum of 2,850 parking spaces will also remain available during all phases of construction (Development Agreement, Exhibit K). Moreover, the Option Agreement for Lots ABC between Google and the City provides that, for the duration of the AMA, the Option cannot be exercised by Google unless an amendment to the parking agreement of the AMA is negotiated and agreed to by SSE. This ensures that, for the duration of the AMA, the parking provided on Lots ABC will not be eliminated without the prior consent of SSE.

Request # 4: Modify the circulation plan and mobility requirements to provide the following street network changes:

- a) Delete all references to the Cahill Street extension north of Santa Clara Street across arena parking lots until such time as the properties are available for development, and after SSE consents to a transfer of the property.***

- b) Provide two through lanes and a left turn lane in each direction on Barack Obama Blvd. (Autumn Street) between Santa Clara Street and Park Avenue in accordance with currently adopted City plans for Autumn Street.**
- c) On Santa Clara Street, maintain two general traffic through lanes in each direction and one or two left turn lanes, as needed, between Stockton Avenue and Almaden Blvd.**
- d) Maintain level of service D or better during the arrival peak hour for SAP Center events on principal traffic routes used by SAP Center customers (Autumn corridor, W. Santa Clara corridor, and Julian corridor), except that no traffic lanes would need to be added beyond the existing lanes at any intersection to achieve level of service D. This exception would not apply to Barack Obama Blvd. (Autumn St.), because that street is planned to be converted from one-way to two-way operation (see point b) above).**

Comment: SSE has repeatedly advised the City and Google that proposed reduction in street network capacity by eliminating roads and lanes on remaining ones, while increasing daytime population in the area by a factor of 20, will create gridlock for residents, workers, and visitors, including arena patrons. SSE continues to share information with the City and Google which confirms this patently obvious conclusion. Studies produced by the City and Google rely on unrealistic trip reduction assumptions, a system of road management (including dynamic lanes and conversion of streets to one-way operation during event peak periods), and other expensive traffic control operations to justify the project. Unfortunately, these and other possible measures will not be able to overcome the fundamental problems caused by reduced roadway capacity, which would make arrival for patrons to the arena during the peak hour before an event incredibly problematic at best, and at worst result in a local transportation system failure. Once the project is approved, the City will have no recourse to make any future modifications when the inevitable problems arise. Therefore, the City should not give up this critical roadway capacity.

City Response:

The City and Google have taken the SSE's concerns regarding traffic and circulation very seriously. Extensive transportation analysis have been undertaken for the Downtown West project, including:

- Transportation Analysis required by CEQA (<https://www.sanjoseca.gov/home/showpublisheddocument/65077/637376179515130000>)
- Local Transportation Analysis (LTA) required by the City, outside of the CEQA process (<https://www.sanjoseca.gov/home/showpublisheddocument/66893/637407905500770000>)
- Supplemental Analysis: Site-Wide Focused LTA (<https://www.sanjoseca.gov/home/showpublisheddocument/71643/637547859588730000>)
- Supplemental Analysis: Delmas Closure (<https://www.sanjoseca.gov/home/showpublisheddocument/71637/637547855517170000>)
- Supplemental Analysis: Parking and Neighborhood Traffic Monitoring Plans (<https://www.sanjoseca.gov/home/showpublisheddocument/71639/637547855529500000>)
- Transportation Demand Management Plan (<https://www.sanjoseca.gov/home/showpublisheddocument/71645/637547861237300000>)

In addition, the City and Google have hired multiple consultants to study event egress and ingress. These analyses were not required per standard city policies and/or practices, but have been completed because

of the import of the SAP Center and our shared goal of maintaining high-quality access to it for all patrons/employees. These analyses have been coordinated with SSE. It is in the City and SSE's mutual interest that access to and from the SAP Center continue to function efficiently and effectively. Numerous other major league and event facilities function well in dense urban areas; the expertise of consultants with Fehr and Peers and Nelson Nygaard who have worked for other Arenas has ensured functional vehicular ingress and egress.

Please refer to Supplemental Analysis: SAP Center Access

(<https://www.sanjoseca.gov/home/showdocument?id=72951>) for summaries of these analyses and their results. The transportation network balances safety, placemaking, and access needs, and allows for flexible use of dynamic lanes – if/when needed – for event-related ingress and egress. These analyses found that the overall transportation network designed by the Downtown West project – including Barack Obama Boulevard, Santa Clara Street, and Julian Street – would function, not only for daily needs but also for event egress and ingress.

The lane configurations requested by SSE are not warranted per the analysis completed by the consultants. Overall, the proposed network accommodates the volume of traffic forecasted as part of the LTA, FLTA, and supplementary ingress/egress evaluation. While some level of congestion is to be expected within an urban environment, the network as a whole functions and maintains vehicular movement without excessive queuing.

To clarify, the City disagrees that the trip reductions are unrealistic; the trip generation assumed in the analyses reflects the location and amount of parking (assumed to be 100% utilized for events); Downtown West project requirements (including for Transportation Demand Management (TDM), <https://www.sanjoseca.gov/home/showpublisheddocument/71645/637547861237300000>); existing and anticipated traffic associated with approved new development projects; and documented travel and access patterns. The Diridon Station area has some of the region's best transit and rail options, with tremendous additional investment underway. Moreover, many developments (including those occupied by Google) have a proven track record of successful TDM programs – even in suburban areas with many fewer transportation options – and the City has instituted penalties for non-compliance that reach up to \$5 million annually.

In response to SSE concerns regarding parking and circulation, the City and DTW project have incorporated numerous elements and/or changes, as articulated in *AMA Key Provision #5*.

Regarding Cahill Street, it would be extended north of Santa Clara Street in tandem with the adjacent development on Lots ABC, not materially before, unless mutually agreed to by all parties involved. [*AMA Key Provision #1*]

Regarding Santa Clara Street, Downtown West does not currently propose any circulation or network changes along Santa Clara other than project frontage improvements along portions of West Santa Clara Street. The City and VTA have proposed continuing to improve the transit experience along Santa Clara Street, as it is a Grand Boulevard and the highest ridership VTA corridor in Santa Clara County. Designs and potential roadway modifications to achieve this – including through “Public Service Lanes” dedicated

to transit and emergency vehicles – are under consideration, as discussed and shared with the SSE multiple times. This is a proposed future improvement that will require future study, design, analysis, and funding. The Downtown West project will contribute to that study as part of the Local Transportation Improvement Project requirements per the LTA.

Regarding the request to generally maintain level of service D during the arrival peak hour, the City has not used Level of Service as an official transportation metric within the Downtown since 2005 (see previous City Council Policy 5-3 and current City Council Policy 5-1). The primary reason is that – within an urban area, a certain level of congestion is to be expected and is in fact desired, as it is an indication of economic success and a thriving place that people want to go to. Roadway systems are typically designed for “normal daily” use, as this avoids inducing speeding, making pedestrians cross large roadways, and other conditions that pose safety concerns when roadways are oversized for normal daily use.

That said, as shown in the LTA, FLTA, and ingress/egress analysis, the City very much continues to work to have a functional, well-designed, and safe transportation network throughout the Diridon area and Downtown. As discussed frequently over the past two years, the City will continue to work with SSE and other stakeholders to update traffic control measures, as needed, including the potential use of the dynamic lane on Barack Obama Boulevard for added through capacity; manual traffic control of intersections, and turn restrictions, to facilitate efficient access for SAP event traffic. Our goal remains to carry out and evolve the TPMP to maintain excellent access and experiences for SAP Center patrons.

The City and Project are not taking any action that materially impedes the implementation of the Arena Transportation and Parking Management Plans (TPMP); to the contrary, the transportation network and roadways were, in fact, designed with existing and potential alterations to the TPMP in mind specifically to facilitate event access. Please refer to *AMA Key Provision #6* for additional detail.

Request # 5: Require that on each occasion when specific development plans are presented to the City for approval, and prior to approving changes to the current street network, the City will include the following as part of the approval process:

- Develop detailed preliminary plans for any proposed street changes desired along principal traffic routes used by SAP Center customers, and provide to SSE for review and comment prior to completion of the LTA discussed below. Any modifications based on results of the LTA or other considerations must also be submitted to SSE for review and comment.***
- Conduct a focused Local Transportation Analysis (LTA) for the proposed development, which will address the development’s impact on level of service at all nearby impacted intersections during the 6 to 7 pm peak arrival hour for events at SAP Center.***

Comment: §21.2.3 of the AMA provides that the City must coordinate with SSE “regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena, including Autumn Street and the intersection at Autumn Street and Park Avenue.” It goes on to state that the parties “shall work together in good faith

with the goal of achieving the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area.”

The City’s obligations under the AMA will continue following approval of the land use entitlement documents for the Downtown West project. However, the minimized process for approval of future development within Downtown West may make it difficult, if not impossible, for the City to fulfill such obligations unless the above suggested procedures are required in the entitlement documents.

City Response:

See AMA Key Provisions #5 and #6 for responses and changes to further incorporate SSE’s request.

Request # 6: Modify the project documents to provide that Delmas Street will remain open between Santa Clara and San Fernando streets. As a less desirable alternative, ensure that Google will be required to provide a driveway (entrance/exit) to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.

Comment: It is SSE’s understanding, based on discussions with Google representatives and recent presentations by Google’s consultants, that Google plans to provide a driveway at Santa Clara Street to/from the Delmas development parking. Although this was not SSE’s preferred alternative, SSE has determined that it is a satisfactory resolution subject to the final design of the driveway and parking, including all the parking being accessible from this driveway. However, SSE cannot find this requirement in the project approval documents, and it is important to ensure that this parking facility will be easily accessible to arena patrons as represented.

If access to this parking facility is not provided directly from Santa Clara Street, then the convenience and efficacy of this critical supply of “Available Parking Spaces” will be severely curtailed, thus diminishing the value of such parking as mitigation for the impacts on the arena caused by the loss of parking resulting from the project. It would also be contrary to the purpose of the Transportation and Parking Management Plan (TPMP) for the arena, as incorporated into the AMA. Such purpose is stated “to establish event traffic and parking management strategies” that promote efficient and effective vehicular and pedestrian traffic circulation; provide convenient and easy access to and from area parking facilities, and minimize traffic congestion on surrounding roadway facilities, among other things.

City Response:

The City and Applicant have heard and understood the import of direct access to parking under the Delmas site for the SAP Center. See AMA Key Provision #5B for the ways in which the City and Applicant are meeting this request.

Regarding the questions about Delmas Avenue more generally, please see Supplemental Analysis for the Downtown West Mixed-Use Project (Delmas Avenue) at <https://www.sanjoseca.gov/home/showpublisheddocument/71637/637547855517170000>; this memo was also sent to SSE on 4/22/2021 to facilitate its review.

Request # 7: Include a requirement that expressly mandates Google will be solely responsible to fund any additional traffic operation expenses needed to implement the requested proposed street circulation management plan for events at the arena.

Comment: Google must mitigate every impact it creates, including additional costs to support its massive development plan. With respect to traffic operation costs which will amount to millions of dollars a year, the community -- including the arena operator -- must not bear responsibility for funding them, which would essentially serve as a subsidy for Google. SSE and/or its customers certainly should not be asked to mitigate Google's project by covering such costs, as the current approvals likely would require.

City Response:

See AMA Key Provision #6 for responses.

Request # 8: Modify the approval documents to require the consent of the arena operator prior to any improvement along the arena frontage, including Santa Clara Street and sidewalks

Comment: The project approval documents include significant planned modifications along Santa Clara Street. These modifications are conceptual at this point so it is not possible to determine what, if any, modifications would be made to the arena frontage between the existing structure and face of the curb. The City has a requirement to not modify lands leased by SSE without its consent, and to make best efforts to coordinate future changes to the road network with SSE to preserve arena operations. Providing consent rights to street frontage improvements proposed by the project is a simple way to ensure the arena operations and SSE's leasehold rights can be protected, in compliance with the AMA.

City Response:

Per the AMA, the City will continue to coordinate with SSE, when applicable, on issues affecting parking, traffic, and roadways in the vicinity of the SAP Center.

To clarify, the Downtown West project does not propose changes to the SAP Center frontage along Santa Clara Street. The Project is proposing significant modifications to the frontage of Lots ABC to Santa Clara Street (e.g., replacing the carpark entry with the C2 Office building and amended sidewalk). The City and Project will confer and consult with SSE, giving SSE and opportunity to review and provide timely, meaningful comment on the proposed plans.

See also response above to AMA Key Provision #2.

Request # 9: Modify the infrastructure plan and other application approval documents to reflect that the utilidor route will not pass through or under the arena parking lots until such time in the future that the parcels may be transferred to Google and included in the General Development Plan.

Comment: It is not clear why Google has proposed a private utility system as a basic part of its development plan that relies on its ability to traverse property leased and controlled by a third party on a long-term basis without obtaining that party's prior consent, regardless of underlying City ownership. Even without the extension of Cahill Street, installation of the utilidor would create major disruption to arena operations, and granting Google the right to construct it is not a property right the City retains under the AMA.

City Response:

The utilidor system would be installed at the same time as the Cahill Street extension north of Santa Clara Street (see responses to Requests 2 and 4a above), unless otherwise mutually agreed by all parties. Therefore, as noted in the response to Request #4 above, that extension would likely occur simultaneously with the development of Lots ABC, and thereby not create additional and/or separate disturbance to the Arena operations.

See also *AMA Key Provision #2*.

Request # 10: Make the potential 4,800 commercial parking spaces allowed in the project applications a minimum requirement, not an "up to" maximum.

Comment: Google's applications and the associated technical studies make clear that even under best case scenarios for transportation mode shift improvements, more than 7,000 of the 25,000+ workers will still drive to work in a single occupant vehicle and many more will carpool. More realistic scenarios show that the number of workers who will need to park in the area will likely be thousands higher. This does not account for parking demands that may be created by additional development, including the proposed DSAP expansion, BART, Caltrain or High Speed Rail projects. The proposed parking requirement for Google of only 2,800 spaces will create significant parking deficiencies in the area, along with associated traffic circulation and safety issues for residents and visitors to the area, including arena patrons. While a 4,800-parking space requirement will not solve the challenge, it will certainly help reduce parking deficiencies. Google should be required to fund and build the parking supply its demand will create, not simply have the option to provide it in the future, or rely on a future city district parking plan which may or may not ever be established or achieve the intended results.

City Response:

Please see *AMA Key Provision #3*, including for clarity around the proposed parking requirement of 4,000 publicly-accessible spaces at full commercial build-out. A detailed parking evaluation for the commercial parking supply is also provided in Appendix H (Parking Analysis for Commercial Uses) to the Local Transportation Analysis.

It should be noted that the technical studies referenced in the comment above do not take the supply of parking into account in assessing travel patterns – which was intentional to make these analyses conservative (i.e., over-estimate, rather than under-estimate, potential vehicular traffic). Reduced and priced parking supply is in-and-of-itself a primary strategy to reduce vehicular travel and associated traffic, pollution, and greenhouse gas emissions. (See *Quantifying Greenhouse Gas Mitigation Measures*,

California Air Pollution Control Officers Association: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/capcoa-quantifying-greenhouse-gas-mitigation-measures.pdf>)

Request # 11: Conform Google’s phasing plan for the Delmas property to comply with the agreement between the City, Google and SSE that parking available on Delmas West must remain available until such time as Block E parking or a suitable alternative is created.

Comment: As part of SSE’s agreement to consent to the sale of Lot D to Google, which was critical to the company’s commitment to move forward with its Downtown West project, Google agreed to retain all existing parking spaces on the Delmas West site until either (i) 408 new “Available Parking Spaces” are provided on Block E and Milligan or other approved alternative location; or (ii) BART service commences to Diridon, or (iii) Google has constructed at least 500 “Available Parking Spaces” as part of the development on Delmas East (all subject to the specific terms of the Lot D Lease with Google). The City’s progress on Block E and the Milligan site has stalled, and there is no timeline for those facilities to be available for parking in the future. Google’s project entitlements, including timing of development of the Delmas site, must account for fulfilling this obligation.

City Response:

See AMA Key Provision #4B for responses.

Request # 12: Include specific construction mitigation measures in the final entitlement approvals to protect the unique operations of the Arena (Arena Protection Plan).

Comment: For more than two years, SSE has continued to plead with the City to address the obvious construction impact challenges presented by the BART project, without any substantive response to specific requests. It is clear that Google’s project will pose even greater challenges for the arena’s continuing successful operations. Yet, the entitlement approvals remain silent on how to mitigate construction impacts, and once approvals are given, the City’s ability to manage any impacts to the arena will be greatly reduced. In the event that Google cannot propose basic construction impact mitigation program prior to approvals, the City can and should establish basic performance standards and other mitigation measures (an Arena Protection Plan) to ensure the safe and convenient ingress and egress of arena visitors (over 1.5 million annually), arena employees, vendors and contractors.

City Response:

The Downtown West project has a Construction Impact Mitigation Plan (Plan) that is currently public on the City’s website: <https://www.sanjoseca.gov/Home/ShowDocument?id=70985>. The Plan describes that Subsequent Construction Impact Mitigation Plans (Subsequent CIMP) will be submitted for each phase or each individual horizontal, vertical or open space project within the Downtown West project area. As articulated in the Plan, Google will be conditioned to submit a Subsequent CIMP for each phase or individual project within the Downtown West project area. The Subsequent CIMP is required prior to issuance of the Encroachment Permit for the horizontal improvements. As the specific timing and construction methodologies for each project are not yet known and may shift due to market conditions or

other factors, a description of project impacts and mitigations is not available at this point. However, the Plan requires that each Subsequent CIMP provide:

- Scope of Work
- Phasing Schedule
- Construction Methodology
- Mitigation Measures
- Communications Plan
- Potential Impacts to Businesses, including the SAP Center

Additionally, similar to other development projects, Google is required to comply with the Downtown Construction Guidelines.

As discussed with SSE on April 15, 2021, the City is also developing a comprehensive approach to coordinating construction activities across stakeholders in the Diridon area, given the multiple major projects anticipated (BART, Downtown West, and potentially High-Speed Rail and/or the Diridon Integrated Station in the future). This approach is being developed in consultation with SSE and the City will continue to seek SSE's input to mitigate construction impacts.

See also changes made per *AMA Key Provision #3*.

Request # 13: Modify Google's permitted uses to ensure that the allowed auditorium and event/conference center uses are adjunct only to the applicant's corporate business, so that the facility will not create competition for the arena or convention center.

Comment: The applicant has represented to the public that these facilities are intended to support its larger corporate business with occasional use for community events. However, the definition of the uses would allow any property owner within the district to utilize such a facility in the future for commercial events that could easily create competition for both the arena and convention center. This is likely unintended but clearly a permitted use in the entitlement documents as currently drafted, and this use limitation needs to be added to avoid harm to these important community facilities and their economic development benefits to the City.

City Response:

The City is interested in the auditorium and event/conference center complementing other Downtown institutions like the SAP Center and Convention Center. We believe that the auditorium and event/conference center, as proposed, would accomplish this objective. See *AMA Key Provision #8* for a full response.

Request # 14: Modify the conditions and administrative permits requirements to allow the Director of PBCE to impose reasonable conditions related to the operation of the future specific use/development proposed to ensure it will not create unreasonable operational impacts for the arena.

Comment: Upon approval of the land use entitlement applications, the applicant or future property owners would have the ability to establish a wide range of uses by right with limited ability by the City to make modifications to protect the public's interest, including the continued successful operation of the arena. As continued vitality of the arena is a basic objective of the DSAP, the City can and should preserve its rights to protect the building's ongoing success, particularly since many of the proposed uses will likely conflict at times with the arena's event and daily operations.

City Response:

The Sitewide Focused LTA and Ingress/Egress supplemental studies have evaluated the Project's potential circulation and transportation network to ensure that the permitted uses will not create unreasonable operational impacts and to aid in detailed designed of the roadways moving forward. For other uses, such as administrative uses, the Director of PBCE has the discretion to impose any other reasonable conditions of approval related to the operation of the specific use that is subject to the Administrative Permit to protect the health and safety of the community, as stated on General Development Plan (GDP) Sheet 4.02. Special Uses and Conditional Uses would go through a discretionary process, and may be subject to additional reasonable conditions as well.

Additionally, GDP Sheet 4.05 in the PD Zoning outlines the required coordination and permits for Special Events and Limit-Term Uses and references the coordination needed with Planning, Office of Cultural Affairs, Fire, Police and/or Department of Transportation to ensure the public safety of event participants, users of City streets, and adjacent property owners.

See also *AMA Key Provision #1 and #9.*

Request # 15: Ensure that for any special uses that could create conflicts with arena operations, Google's administrative permit requirements include a procedure whereby the arena operator must be notified of the application for the proposed activity, and before granting any permit for approval the Director must consult with the arena operator and impose reasonable conditions to protect the arena's operations.

Comment: The proposed uses described in the Google development plan include live entertainment, auditorium, outdoor vending and other special events that, as currently drafted in the Conditions of Administrative Permit section, will likely create conflicts with arena operations without any recourse by the City to correct them. This relinquishment of land use authority goes well beyond the scope of use or approval process for typical projects. The permit procedures in the entitlements guarantee that Google can schedule a wide-ranging number of large events that could trigger road closures or competition for scarce parking on arena event days, without any oversight by the City or the need for any coordination or deference for events at the arena. Neither Google nor successive owners of parcels covered by the entitlements should be granted unique rights to schedule these types of events without going through the approval procedures imposed on others in the area, and without consideration for potential conflicts with the arena operations.

In addition, use rights granted in the entitlement documents should not conflict with other City ordinances. For instance, the outdoor vending rights appear to conflict with the updated peddler's

ordinance adopted by the City less than 2 years ago. At minimum, the specific protections granted to the arena in the ordinance should be included (or incorporated by reference) in the entitlement documents.

City Response:

See *AMA Key Provision #9* for responses.

In addition to the requirements described in response #14, the City coordinates activities that occur near the Arena and endeavors to avoid conflicts in operations (and to mitigate those conflicts when they arise). During the construction period, the Construction Impact Mitigation Plan requires coordination among the City and other area stakeholders, including SSE.

Live entertainment, auditorium, and outdoor vending are considered ongoing uses and as such, there will be no mandated noticing for these uses. These uses are permitted by right, as long as they meet the criteria on the Planned Development Zoning Sheet 4.02. PD Zoning Sheets 4.02 and 4.03 describes the process and conditions of approval for the Administrative Permits for particular uses. Activation activities are a desired and important program element for the City and broader community.

The Director of PBCE may impose reasonable conditions of approval related to the operation of the specific use that is subject to the Administrative Permit to protect the health and safety of the community. There are safeguards in place in the event of any noncompliance with respect to the requirements of the Administrative Permit and subsequent PD Permit pursuant to the remedies available to the City of San Jose Municipal Code. The conditions for Outdoor Vending was created through review of the City's Ordinance with a few modifications to reflect site-specific allowances for the privately-owned publicly accessible open space. Should Google host an event that requires closure of public rights-of-way that allow for vehicle access, then this type of event would be coordinated through the typical City of San Jose Event Permit Application.

Request # 16: The City must ensure that any update to the Diridon Station Area Plan does not preclude the ability to establish a stand-alone parking structure on Block E as long planned for the site.

Comment: Both the Lot E and Milligan sites are anticipated to be interim parking lots and potentially, new parking structures that would serve arena patrons. However, current draft of the proposed DSAP Amendment would modify the zoning designation for these sites. This along with new mixed use design guidelines, would preclude the properties from being developed solely as a stand-alone parking structure in a manner that will protect future arena operations long contemplated by the City and as reflected in the currently adopted DSAP.

Specifically, the proposed zoning designations for these sites are Downtown Primary Commercial. We believe that instead these sites should be zoned Public/Quasi-public to allow the construction of public parking facilities. We are also concerned that requiring the future structures to be "wrapped with active uses" will diminish parking capacity and ingress/egress functionality for event purposes, and cause access and safety impacts to pedestrians accessing the parking from either the arena or other nearby

uses. Also, because there is a potential for both sites to be used for interim parking uses, §5.4 Surface Parking Lots of the Downtown Design Standards and Guidelines (DDGs) should not be required.

In addition, because these future required parking facilities must provide for safe and efficient ingress and egress that supports access to the street network, in accordance with the objective of the DSAP to ensure the continued vitality of the Arena consistent with the provisions of the AMA, the future parking lots and structures on these sites must not be required to be consistent with §3.5.3 Parking and Vehicular Access Location of the DDGs. The ability of parking facilities to best serve arena events is tantamount to pedestrian safety and good transportation management.

City Response:

The City fully intends to include the parking garage at Lot E, as articulated in the draft City-initiated Diridon Station Area Plan amendments. The design of the garage is yet to be completed, but would prioritize consideration of parking structure design and capacity. This is outside of Google's purview and outside of the boundary of the Downtown West project. However, it is addressed in the City-initiated DSAP amendments.

That said, the City believes it is important that future parking structures have an active ground floor, which helps with pedestrian safety, security, and visual interest, and allows space for businesses. With respect to this particular garage, the City would potentially consider some exceptions to this requirement, if required to realize parking capacity or other related needs. However, the City also reserves the right to allow for other commercial development over the planned garage, which is why the Downtown Commercial designation is more appropriate than the requested Public/Quasi-Public designation.